

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**





~~FOR FILING~~

JOINT APPENDIX

**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals  
for the District of Columbia Circuit

FILED JUL 13 1966

553

NO. 20,077

*Nathan J. Paulson*  
CLERK

TRUCK DRIVERS AND HELPERS, LOCAL UNION 568, aff'l with  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN, AND HELPERS OF AMERICA,

*Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD,

*Respondent.*

NO. 20,131

NATIONAL LABOR RELATIONS BOARD,

*Petitioner,*

v.

RED BALL MOTOR FREIGHT, INC., and  
UNION OF TRANSPORTATION EMPLOYEES,

*Respondent.*

On Petition For Review and on Petition For  
Enforcement of an Order of the National Labor  
Relations Board

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Relations Board

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JOINT APPENDIX

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JOINT APPENDIX

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

TRUCK DRIVERS AND HELPERS, LOCAL UNION 568  
aff'd with INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND  
HELPERS OF AMERICA,

Petitioner,

No. 20,077

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

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NATIONAL LABOR RELATIONS BOARD,

Petitioner,

No.

v.

RED BALL MOTOR FREIGHT, INC., AND UNION OF  
TRANSPORTATION EMPLOYEES,

Respondent.

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PREHEARING CONFERENCE STIPULATION

Pursuant to Rule 38(k) of the Rules of this Court, the parties,  
subject to the Court's approval, hereby stipulate as follows:

I. THE ISSUES

A. The issues in Case No. 20,077 are as follows:

1. Whether the Board properly found that the Company did not discriminate against certain employees in the assignment of overtime in violation of Section 8(a)(1) and (3) of the Act.

2. Whether the relief granted by the Board was sufficient to effectuate the purposes of the Act.

B. The issues in Case No.                    are as follows:

1. Whether substantial evidence on the whole record supports the Board's finding that the Company discriminated against certain employees in regard to the assignment of overtime in violation of Section 8(a)(1) and (3) of the Act.

2. Whether substantial evidence on the whole record supports the Board's finding that the Company unlawfully assisted the Union of Transportation Employees in violation of Section 8(a)(2) of the Act.

3. Whether substantial evidence on the whole record supports the Board's finding that the Union of Transportation Employees violated Section 8(b)(1)(A) of the Act by threatening to discriminate against certain employees, and by promising preferential treatment to other employees, in disregard of its duty of fair representation.

4. Whether the Board's remedy was proper under the Act.

## II. THE JOINT APPENDIX

1. The relevant portions of the record shall be reduced to a joint appendix comprising the materials the parties designate, and each party will pay the printer directly for its share of the reproduction cost and mailing expenses.

2. Local 568 shall designate those portions of the record required to be reproduced by the Rules of this Court (including the Board's Decision and Order, the Trial Examiner's Decision, this stipulation and the Court's order thereon) and shall bear the cost of reproducing these materials.



3. Each party shall designate such additional material as it wishes to reproduce and shall bear the cost of reproducing the material which it designates. The reproduction of the joint appendix shall be the responsibility of the Board, and shall be by multilith process.

4. Local 568 shall serve the Board, the Company and the Union of Transportation Employees (UTE) with its designation on or before May 16, 1966. The Board shall serve Local 568, the Company and the UTE with its designation of additional portions of the record which it wishes reproduced on or before May 23, 1966. The Company shall serve Local 568, the Board and the UTE with its additional designations on or before May 30, 1966. The UTE shall serve Local 568, the Board and the Company with its additional designations on or before June 6, 1966.

5. Forty (40) copies of the joint appendix shall be reproduced under this stipulation; the required number of copies shall be filed with the Court and the remaining copies shall be divided equally among the parties.

6. The parties and the Court may refer to any portion of the original transcript of record or exhibits herein which has not been reproduced, it being understood that any portion of the record thus referred to will be reproduced in a supplemental joint appendix if the Court so directs.

### III. ORDER OF FILING BRIEFS

The Board shall file the opening brief. Thereafter, Local 568, the Company and the UTE shall file answering briefs at the same time. Any party may thereafter file a reply brief within the time permitted by the Court's rules.

Dated at Washington, D. C.,  
this 5th day of May, 1966.

/s/ Marcel Mallet-Prevost  
Marcel Mallet-Prevost  
Assistant General Counsel  
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.,  
this 5th day of May, 1966.

J. Parker Connor  
Mullen & Connor  
515 Southern Building  
Washington, D. C.  
Allen P. Schoolfield  
Counsel for Red Ball Motor Freight, Inc.

Dated at Washington, D. C.,  
this 5th day of May, 1966.

Thomas P. Brown, III  
1008 20th St., N. W.  
Washington, D. C.  
Lynn Estep, Jr.  
Counsel for Union of Transportation  
Employees

Dated at Washington, D. C.,  
this 5th day of May, 1966

David R. Richards  
Mullinax, Wells, Mauzy, Levy  
& Richards  
1601 National Bankers Life Bldg.  
Dallas, Texas  
Counsel for Truck Drivers & Helpers Local  
Union 568, etc.

# PREHEARING ORDER

Counsel for the parties in the above-entitled cases having submitted their stipulation pursuant to Rule 38(k) of the General Rules of this Court, and the stipulation having been considered, the stipulation is approved, and it is

ORDERED that the stipulation shall control further proceedings in these cases unless modified by further order of this court, and that the stipulation and this order shall be printed in the joint appendix herein.

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BEFORE THE NATIONAL LABOR RELATIONS BOARD

## Sixteenth Region

**In the Matter of:**

RED BALL MOTOR FREIGHT, INC.

and

**TRUCK DRIVERS AND HELPERS, LOCAL UNION  
568, affiliated with INTERNATIONAL BROTHER-  
HOOD OF TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMERICA**

**UNION OF TRANSPORTATION EMPLOYEES  
(RED BALL MOTOR FREIGHT, INC.)**

-and-

**TRUCK DRIVERS AND HELPERS, LOCAL UNION  
568, affiliated with INTERNATIONAL BROTHER-  
HOOD OF TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMERICA**

**Case No. 16-CA-2226  
and  
16-RM-273**

**Case No. 16-CB-249**

Courtroom,  
Third Floor  
United States Post Office and  
Federal Building  
Shreveport, Louisiana,  
Tuesday, July 13, 1965.

The above-entitled matter came on for hearing, pursuant to notice,  
at 10:00 o'clock a.m.

BEFORE:

DAVID S. DAVIDSON, Trial Examiner

\* \* \* \* \*

4

# PROCEEDINGS

TRIAL EXAMINER DAVIDSON: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of Red Ball Motor Freight, Incorporated and Truck Drivers and Helpers, Local Union 568, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Case No. 16-CA-2226 and 16-RM-273 and also the Union of Transportation Employees (Red Ball Motor Freight, Inc.) and Truck Drivers and Helpers, Local Union 568, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Case No. 16-CB-249.

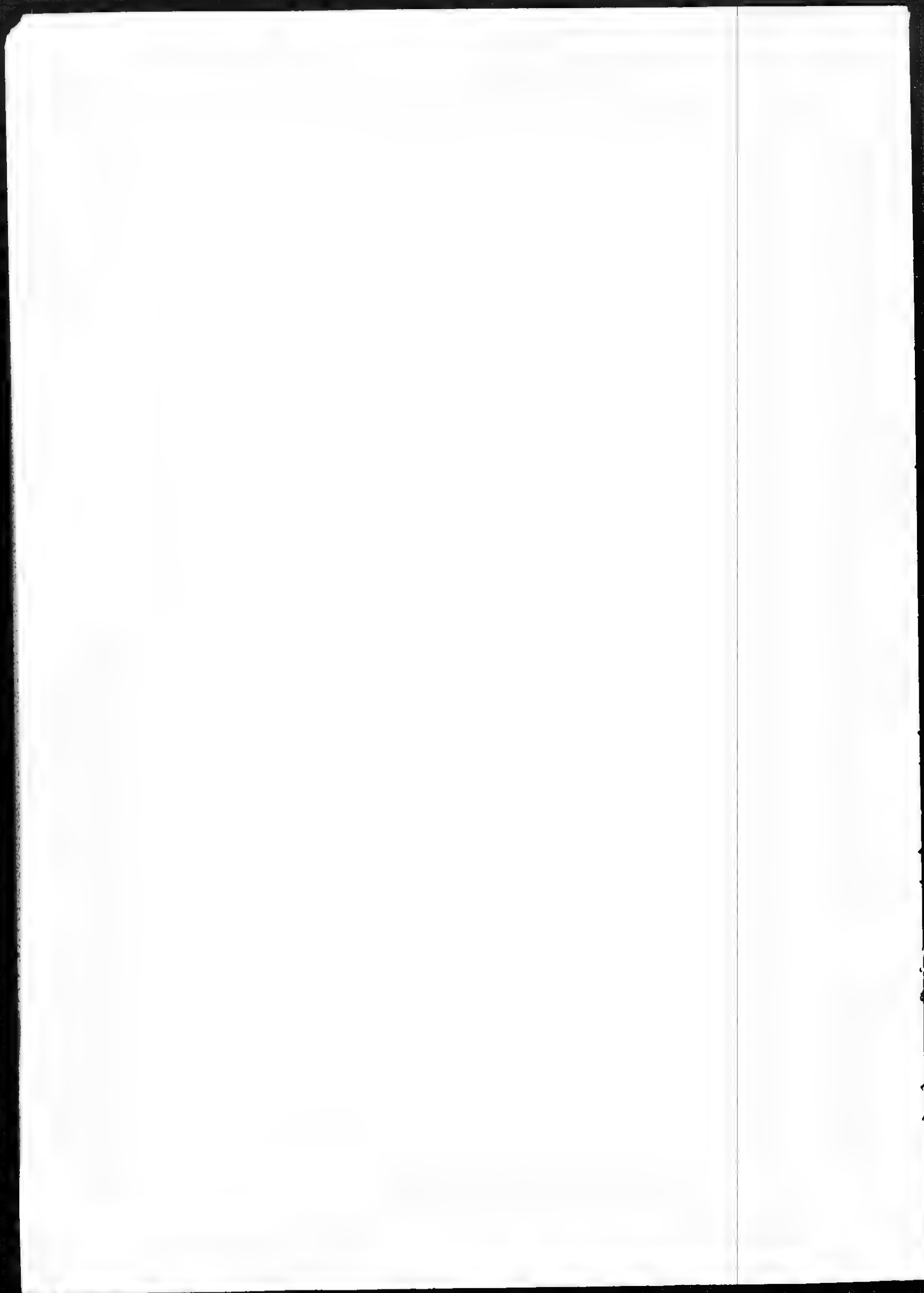
The Trial Examiner conducting this hearing is David S. Davidson.

Will counsel and other representatives of the parties please state their appearances for the record?

MR. PALMER: Sanford H. Palmer, attorney for the General Counsel.

MR. HAYS: William M. Hays, secretary and treasurer of Truck Drivers Local No. 568.

MR. RICHARDS: Appearing for the Charging Party, David R. Richards of the law firm Mullinax, Wells, Morris & Mauzy, 1601 National Bankers Life Building, Dallas, Texas.



**BRIEF FOR TRUCK DRIVERS AND  
HELPERS, LOCAL UNION 568**

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**In the  
United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**No. 20,077**

**TRUCK DRIVERS AND HELPERS, LOCAL UNION 568,  
affiliated with  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN, AND HELPERS  
OF AMERICA,**

*Petitioner,*

**v.**

**NATIONAL LABOR RELATIONS BOARD,**

*Respondent.*

**No. 20,131**

**NATIONAL LABOR RELATIONS BOARD,**

*Petitioner,*

**and**

**TRUCK DRIVERS AND HELPERS, LOCAL UNION 568,  
affiliated with  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN, AND HELPERS  
OF AMERICA,**

*Intervenor,*

**v.**

**RED BALL MOTOR FREIGHT, INC., AND UNION  
OF TRANSPORTATION EMPLOYEES,**

*Respondents.*

**ON PETITION TO REVIEW, AND ON PETITION TO  
ENFORCE, AN ORDER OF THE NATIONAL  
LABOR RELATIONS BOARD**

**DAVID R. RICHARDS  
1601 National Bankers Life Building  
Dallas, Texas 75201**

*Of Counsel:*

**MULLINAX, WELLS, MAUZY, LEVY & RICHARDS  
1601 National Bankers Life Building  
Dallas, Texas 75201**



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In the  
**United States Court of Appeals**  
**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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**No. 20,077**

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TRUCK DRIVERS AND HELPERS, LOCAL UNION 568,  
affiliated with  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN, AND HELPERS  
OF AMERICA,  
*Petitioner,*

v.  
NATIONAL LABOR RELATIONS BOARD,  
*Respondent.*

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NATIONAL LABOR RELATIONS BOARD,  
*Petitioner,*  
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CHAUFFEURS, WAREHOUSEMEN, AND HELPERS  
OF AMERICA,  
*Intervenor,*

v.  
RED BALL MOTOR FREIGHT, INC., AND UNION  
OF TRANSPORTATION EMPLOYEES,  
*Respondents.*

---

**ON PETITION TO REVIEW, AND ON PETITION TO  
ENFORCE, AN ORDER OF THE NATIONAL  
LABOR RELATIONS BOARD**

---

**BRIEF FOR TRUCK DRIVERS AND  
HELPERS, LOCAL UNION 568**

### JURISDICTIONAL STATEMENT

The petitioner in No. 20,077 is a local union affiliated with the International Brotherhood of Teamsters, and was the charging party before the National Labor Relations Board. It now seeks review of that portion of the Board's Decision and Order which was unfavorable to it, and is an aggrieved party under Section 10(f) of the National Labor Relations Act, 29 U.S.C. §160(f).

In No. 20,131, the National Labor Relations Board seeks enforcement of its Order against respondents Red Ball Motor Freight, Inc. and the Union of Transportation Employees. The two petitions have been consolidated inasmuch as they arise from a single proceeding before the National Labor Relations Board, and petitioner Local 568 has been permitted to intervene in No. 20,131. This Court has jurisdiction under Sections 10(e) and 10(f) of the National Labor Relations Act, 29 U.S.C. §§160(e), (f).

### STATEMENT OF THE CASE

Red Ball Motor Freight is a common carrier operating in several states. In 1962 Red Ball acquired Couch Motor Lines and began operations from Shreveport, Louisiana, to the East. Before this purchase of Couch, Shreveport had been Red Ball's eastern terminus. Couch employees were represented in collective bargaining by various Teamster locals, whereas the employees in Red Ball's older operations from Shreveport to the West

were represented by an independent union know as the U.T.E.<sup>1</sup>

For a time Red Ball operated the two Shreveport terminals separately, one under a Teamster contract and the other under the U.T.E. agreement. Finally, on August 20, 1964, Red Ball advised both unions of its intention to close the old Couch terminal in Shreveport and consolidate its Shreveport operations in the newer Airline Drive terminal which was then covered by a U.T.E. agreement (J.A. 16-18). To resolve the resulting representation conflict the parties entered an agreement for an NLRB election to be held on September 10, 1964 (J.A. 10). These developments set the backdrop for the unfair labor practices at issue in the present case. All of the events that concern us took place in Shreveport during the fall of 1964, and involve the efforts of Red Ball and the U.T.E. to secure defeat of the Teamsters in the NLRB elections. The following chronology will assist in placing the events in the proper framework. (J.A. 10-15).

August 20, 1964 —Red Ball advises of its intent to consolidate Shreveport terminals.

September 1, 1964—Parties enter agreement for NLRB election.

<sup>1</sup> Red Ball had been unstinting in its efforts to maintain the U.T.E. as the bargaining representative of its employees. Thus, in 1962, Red Ball discharged several Teamster supporters, in Shreveport, Dallas, and Houston, in order to discourage Teamster membership. *Red Ball Motor Freight, Inc.*, 143 NLRB 125, enf'd. *General Drivers Local 968 v. NLRB*, ..... F. 2d ..... (D.C. Cir. 1964). See also *Red Arrow Freight Lines, Inc., et al v. NLRB*, 180 F. 2d 585 (5th Cir. 1950).

- September 10, 1964—First NLRB election.
- September 17, 1964—Teamsters file objections to election.
- September 21, 1964—Red Ball consolidates terminals.
- October 2, 1964 —Employer speech advising of curtailment of overtime.
- October 5, 1964 —NLRB issues notice of hearing on Teamster objections.
- October 20, 1964 —Hearing held on Teamster objections.
- November 10, 1964—NLRB order setting aside first election and NLRB ordering new election.
- December 2, 1964 —Second NLRB election.

On September 21, 1964, the employer consolidated its two Shreveport terminals, and for the first time U.T.E. and Teamster members were working side by side on a common freight dock. During the first two weeks after the consolidation, Teamsters worked substantial overtime hours (see G.C. Ex. 11, App.). By October 2nd, 1964, the question of whether Teamsters would draw premium pay after 8 hours had become of paramount concern to the U.T.E. employees whose premium pay did not commence until after 10 hours. (J.A. 72, 149). On October 2nd, the company held a meeting with all employees, during which it advised of its intention

to curtail all overtime in the future (J.A. 133). Questions were asked as to the method of overtime payment for Teamsters (J.A. 75) and the company replied that it would follow the applicable union contract in determining method of payment (J.A. 96).<sup>2</sup>

On October 5, 1964, the Regional Director of the Board issued his notice of hearing on the Teamster objections, indicating at least a strong possibility of a new election. The prospects of a second election, coupled with the mounting U.T.E. complaints about overtime, posed obvious problems for Red Ball. If Teamsters continued to earn significant premium pay for hours in excess of 8, it would materially injure the employer's argument for continued U.T.E. representation. Red Ball could hardly urge that "The Teamster contract restricts you to 8 hours per day, and 40 hours per week by its penalty time provisions," (J.A. 188) if in fact Teamsters were working overtime hours.

On October 6, 1964, dock foreman Baker told Salley, a U.T.E. man, whom he had already told to punch out, to come back and work, for he was going to give U.T.E. employees all the overtime they wanted for the next two weeks preceding the scheduled NLRB hearing on objections (J.A. 46). Employee Ainsworth heard Baker make a similar

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<sup>2</sup> This meant that the Teamsters would continue to receive premium pay after 8 hours and U.T.E. members would not receive premium pay until they had completed 10 hours in any given work day.

statement on or about the same date (J.A. 72).<sup>3</sup> Contemporaneous with Baker's remarks there was a marked change in the treatment of Teamsters. They began to be told for the first time to punch out as soon as they completed their 8 hours (J.A. 93, 94). This treatment contrasted with that of the U.T.E. drivers who were instructed to work until relieved (J.A. 97). This intentional curtailment of Teamster overtime came to the attention of Local 568, and on October 8th, the union presented a grievance to the company protesting the disparate treatment (J.A. 102-106). The Teamster complaints went unheeded and Red Ball's preferential treatment of the U.T.E. on overtime distribution continued up until the December 2nd election.<sup>4</sup>

### *Red Ball and the Allocation of Overtime*

Red Ball used the overtime issue as its principal argument to induce the employees to vote for the U.T.E. Central to Red Ball's argument for

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<sup>3</sup> Baker didn't testify in the Board proceeding and hence we can only speculate as to the two week qualification in his statement. One possible answer is that following the NLRB hearing it became apparent that there was merit to the Teamster objections and thus Baker, as well as others, continued their preferential treatment of the U.T.E.

<sup>4</sup> It became so marked on one occasion that Teamster Giddens was relieved by a U.T.E. employee while he was in the process of making a pick-up, despite the fact that they were both on overtime (J.A. 112-113).



employee support of the U.T.E. was that the U.T.E. contract afforded greater earnings.<sup>3</sup>

Terminal Manager Bailey wrote all employees on November 13, 1964 (J.A. 188), advising:

*"The big question is which contract will apply. We think you have all worked side by side long enough to know in your own minds that the U.T.E. contract assures all of you of more take home pay. This Company is not able to pay one and one-half times the hourly rate to move freight. The teamster contract restricts you to 8 hours per day, and 40 hours per week by its penalty time provision. Those of you who have worked at the Abbie Street dock know this.*

*"We think you should stick by your own convictions and vote for the U.T.E. contract as you did before so your families can enjoy the extra take home pay." (Emphasis added).*

This letter was followed up on November 27th by another letter from Bailey (J.A. 181) in which he advised the employees:

*"Let me solicit your vote in the Wednesday election for the Union of Transportation Employees. I say this because I am a practical*

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<sup>3</sup> Although there were other economic differences between the U.T.E. and Teamster contracts, one principal distinction was that under the Teamster contract the employer was required to pay time and a half to its employees for all hours in excess of 8 in any one work day, or in excess of 40 in any one work week, whereas, under the U.T.E. contract such premium pay was not required except for hours of work in excess of 10 in any one work day. Thus, it was quite common for employees under U.T.E. contract to work 60 hours per week at straight time rates.



man and want to show you the difference in take-home pay averages under the U.T.E. contract in comparison with the Teamster contract. These are *weekly averages* computed by our machines in Dallas.

<i>"Teamster's Contract</i>	<i>Week Ending 11-19</i>
x x x x	x x x x
Shreveport	\$130.85 average
 <i>U. T. E. Contract</i>	 <i>Week Ending 11-19</i>
x x x x	x x x x
Shreveport	\$167.97"

The factor that made Bailey's argument irrefutable was that the company had seen to it that the facts fit the argument. Thus, during this crucial period between October 2nd and the second election on December 2nd, Teamster overtime had been virtually eliminated, except in the few instances of employees who had regular runs that prevented the company from eliminating their overtime. (See G.C. Ex. 11, App.). Not only had Red Ball virtually eliminated the overtime of Teamster employees, it had continued to accord premium pay earnings to the U.T.E. members despite the fact they had to work 10 hours in any day before they were entitled to it. During the period of time from October 4th through December 2nd, "the average amount of overtime worked by U.T.E. employees was 21.75 hours, while that worked by the Teamster employees was 10.6. Of the 49 U.T.E. employees only 5 worked less overtime than the average for Teamster employees. Of the 30 Teamster employees,

only 4 worked as much as or more than the average for the U.T.E. employees." (J.A. 218). In this two month period the average premium pay earnings of the U.T.E. employees was some \$50.00 more than that of their Teamster counterparts. With this sort of allocation of premium earnings it is no wonder that the employer felt confident in saying that: "We think you have all worked side by side long enough to know in your own minds that the U.T.E. contract assures all of you more take-home pay." (J.A. 188).

### *The U.T.E. and Seniority*

Before the first NLRB election the U.T.E. hit upon what seemed to be an unbeatable formula to insure its victory. There were 49 U.T.E. members from the Airline terminal as contrasted with only 30 Teamsters in the election unit (J.A. 195). Obviously, if the U.T.E. could hold the allegiance of its own members victory was assured.

The U.T.E. chose the device of seniority to attempt to hold this allegiance. Meetings were held at which U.T.E. president Scruggs told the assembled employees:

"... in other words, boys, it means that if the UTE wins the election, you boys will have your seniority and will not be disturbed.

"The Teamster boys will come in under the UTE boys.

"He said if the Teamsters win the election, that means that seniority will be dove-tailed and you will have . . . 15 former Couch men over your top seniority men at Red Ball." (J.A. 43).<sup>6</sup>

The U.T.E. held firm to the position that if certified, it would never agree to dove-tail seniority, but would insist that the Teamsters from the Couch system would come in at the bottom of the seniority list. (J.A. 34).

This position was reinforced by letter from the U.T.E. attorney, (J.A. 180) distributed to the employees shortly before the first election, which stated:

"This letter is in reply to the letter of the lawyer for the Teamsters. I am the attorney for the Union of Transportation Employees *and will represent you in bargaining with the company on your seniority rights when the Union of Transportation Employees wins this election.* (Emphasis added).

"Mr. Wells is absolutely right in his statement that there has been no agreement on seniority. He does not have to agree, he knows that under the Teamsters' contract, Article 5, Section 6(b) (2), any employees transferring under the Teamsters contract go to the bottom of the seniority list. It is already controlled by the Teamsters contract. Even if seniority is dove-tailed, you know a majority of UTE employees

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<sup>6</sup> There were some 15 Teamsters whose original dates of hire were earlier than the most senior U.T.E. member. (J.A. 35).

*will go to the bottom of the board should the Teamsters win. (Emphasis added).*

“When the Union of Transportation Employees wins the election, the Teamsters Union will have no bargaining rights and no say-so at all. You can rest assured that the Union of Transportation Employees will *never* agree that its members will go to the bottom of any seniority list and that your seniority will be respected and protected against all others. Do not be fooled by long, legal, complicated letters. This is a plain statement of the position of the Union of Transportation Employees.”

### *The NLRB Decision*

The Trial Examiner's decision, which was adopted by the Board, found that the Union of Transportation Employees had violated Section 8(b)(1)(A) of the Act in promising and/or threatening to take unlawful discrimination against former Teamsters in the negotiation of any future seniority clause. The Board found further that Red Ball had violated Sections 8(a)(1), (2) and (3) of the Act in threatening, and carrying out its threat, to discriminate against the Teamsters in the allocation of premium pay.

In its remedy, the Board, although finding that there had been a substantial disparity in overtime for all Teamster employees, awarded a remedy for only seven of the 30 Teamsters. This conclusion was justified on the following rationale (J.A. 231):

“... the Teamster employees were denied over-

time on an equal basis with UTE employees, as found above, to demonstrate to all employees that selection of the Teamsters would result in loss of overtime work while selection of UTE would not impair opportunities for premium pay work for the purpose of encouraging employees to vote for UTE and against Teamsters, in violation of Section 8(a)(1) and (3) of the Act.

*"In light of the above and the overall disparities in overtime assignments there is basis for strong suspicion that the discriminatory assignments of overtime affected all Teamster employees except for a few whose more substantial overtime is explained by special circumstances. However, . . .*

*"Because of the staggered working hours and differences in duties, classifications, and pay, . . . I have concluded the evidence before me is not sufficient to establish that there was overtime work for which there were any other Teamster employees available on the same basis as UTE employees and which the Teamster employees were denied." (Emphasis added).*

While finding the violation of Section 8(a)(2), the Board did not, however, order the customary remedy of withdrawal of recognition of the U.T.E. until such time as it was duly certified by the NLRB.

### STATUTES INVOLVED

Section 7 of the National Labor Relations Act, 29 U.S.C. §157 provides as follows:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a) (3)."

Section 8 of the National Labor Relations Act, 29 U.S.C. §158 provides in part as follows:

"Sec. 8(a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7;

"(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: . . .

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: . . .

"Sec. 8(b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: . . ."



### STATEMENT OF POINTS

1. The Board erred in failing to find that Red Ball's policy of discriminatory allocation of overtime affected all Teamster employees and erred in failing to expand its remedy accordingly.

2. The Board erred in failing to order Red Ball to withdraw recognition from the U.T.E. until such time as it is certified by the Board as the bargaining representative of its employees.

### SUMMARY OF ARGUMENT

The Board found that Red Ball both threatened to discriminate, and in some instances did discriminate against Teamsters and in favor of the U.T.E. in the allocation of overtime. It found "overall disparities in overtime assignments" (J.A. 231), disparities which were never explained. It erred in failing to draw the only logical inference, that Red Ball's unlawful Teamster animus produced the disparity.

The history of the U.T.E. is one checkered with unlawful employer support. In this very case the employer has attempted to utilize the U.T.E. contract as a shield against its own unfair labor practices. The Board erred in failing to require withdrawal of recognition from the U.T.E.

**ARGUMENT***Red Ball's Overtime Policy*

Red Ball's dock foreman, who is responsible for making overtime assignments (J.A. 139, 147) openly threatened to discriminate in favor of U.T.E. employees in making these assignments. (J.A. 46, 71, 72). Thereafter, as asserted by the Board in its brief to this Court (p. 8), "There was a sharp reduction in the daily overtime worked by Teamster employees, and a substantial increase for UTE employees (J. A. 211)." The drastic nature of this reduction is demonstrated by the exhibit appearing in the Appendix.

Teamster employee Turner drew \$35.65 premium pay for the week ending October 3, 1964. In the 5 weeks he worked following Baker's threat he earned less than \$7.00 in premium pay. Teamster employee Ainsworth earned \$75.93 in premium pay in the one week period ending October 3, 1964. In the next 9 weeks following Baker's threat he earned less than \$10.00. (See G. C. Ex. 11, Appendix). A U.T.E. employee, Litton, whose work day ended at the same time as Ainsworth, earned over \$125.00 in premium pay during the same period of time (J.A. 214).

In failing to find a pattern of overall discrimination the Board ignored the necessary implication of its own fact findings.



The Board found:

(1) "It is clear that the overtime assignments as a whole were disparate and that U.T.E. employees as a group were assigned more overtime than Teamster employees." (J.A. 219).

(2) "... there is independent evidence to establish that the disparate assignments were based on union considerations and for the purposes of encouraging UTE membership and discouraging Teamster membership." (J.A. 229).

(3) "When the disparate overtime assignments began in this case, it is undenied that Baker told Salley . . . that for the next 2 weeks UTE men would get all the overtime they wanted." (J.A. 229).

(4) "... Baker's announcements can only be construed as a promise to prefer UTE employees in the assignment of overtime to their benefit and to the detriment of Teamster employees who would otherwise expect to share in overtime work." (J.A. 230).

(5) "It was in this setting *after 6 weeks of the unexplained preferential assignments* that Bailey's November 13 letter pointed out 'the Teamster contract restricts employees to 8 hours per day and 40 hours per week by its penalty time provision'." (J.A. 231).

(6) "... I conclude that the Teamster employees

were denied overtime on an equal basis with UTE employees . . . to demonstrate to all employees that selection of the Teamsters would result in loss of overtime work . . . for the purpose of encouraging employees to vote for UTE and against Teamsters . . ." (J.A. 231).

In the face of these broad findings, all amply supported by uncontradicted evidence, the remedy limiting back pay to only 7 of the 30 Teamsters is unrealistic. As found by the Board there were "unexplained preferential assignments" (J.A. 231) of overtime to U.T.E. employees. The only "explanation" available is that the "Teamster employees were denied overtime . . . to demonstrate to all employees that selection of the Teamsters would result in loss of overtime work." (J.A. 231). An appropriate remedy would require reimbursement of all Teamster employees, not just 7, for it was all who felt the impact of the company's discriminatory policy.

The remedy is simple. Reimburse all Teamsters whose overtime earnings were less than the U.T.E. average so that each Teamster would receive at least the average overtime earnings of the U.T.E. employees, some \$50.00 per man. (J.A. 218).

#### *The 8(a)(2) Remedy*

For some 20 years the U.T.E., and its predecessor, has benefitted from unlawful assistance by Red Ball and other southwestern carriers. Thus the Board noted with respect to the U.T.E. in 1963:

"In 1948 the Board found, as a result of charges filed by the Teamsters Union, that several motor carriers, of which [Red Ball] was one, had unlawfully controlled the National Association of Motorized Common Carrier Truck Line Employees, purporting to represent the truckers' employees, and ordered its disestablishment. The Board found that one R. S. Craig was a management representative of [Red Ball] and that [Red Ball] has expressly authorized Craig to form the Association. Sometime following the Board order disestablishing the Association, *UTE was formed with Craig as its president.*" *Red Ball Motor Freight, Inc.*, 143 NLRB 125, 127, enf'd. *per curiam Teamsters 968 v. NLRB*, (Mar. 3, 1964, D.C. Cir.), F. 2d .....

Following the decision requiring Red Ball and other carriers to withdraw recognition of the aforementioned Association, *NLRB v. Red Arrow Freight*, 180 F. 2d 585 (5th Cir., 1950), the U.T.E. was formed. The Board was unsuccessful in its attempts to persuade the Fifth Circuit Court of Appeals that the employer's recognition of the U.T.E. was in contempt of its earlier order disestablishing the Association. *NLRB v. Red Arrow Freight Lines*, 193 F. 2d 979 (5th Cir., 1952); *NLRB v. Red Arrow Freight Lines*, 213 F. 2d 260 (5th Cir., 1954). However, in the same year the Court enforced a Board order finding that the same UTE had been unlawfully supported by another carrier. *NLRB v. Braswell Motor Freight Lines*, 209 F. 2d 622 (5th Cir. 1954); modified on rehearing 213 F. 2d 208 (1954).

This Court, as previously noted, enforced in 1964, a Board decision finding Red Ball guilty of discrimination against employees who sought to unseat the U.T.E. Against this backdrop there is no basis for the Board's departure from its customary 8(a)(2) remedy. In 1948 the Board announced its policy to be:

"But when the Board finds that an employer's unfair labor practices were limited to interference and support and never reached the point of domination, we shall only order that recognition be withheld until certification . . ." *Carpenter Steel Company*, 76 NLRB 670 (1948).<sup>7</sup>

The Supreme Court has noted this consistent Board practice:

"... in the case of the *assisted but undominated* union the Board has consistently directed the employer to withhold recognition from the assisted union until the union receives a Board certification. *NLRB v. District 50, U.M.W.*, 355 U.S. 453, 458; see *NLRB v. LaSalle Steel*, 178 F. 2d 829 (7th Cir. 1949); *NLRB v. Braswell Motor Freight*, 209 F. 2d 622 (1954).

There is no basis for deviation from established practice and the Board should have required Red Ball to withdraw recognition from the U.T.E. and cease applying its contract.

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<sup>7</sup> *Carpenter Steel* continues to be cited as controlling precedent by the NLRB. *Modcam Plastics Corp.*, 155 NLRB No. 112 (1965).

## CONCLUSION

For the reasons above stated, the Board order should be enforced with the modifications requiring full reimbursement of overtime and withdrawal of recognition from the U.T.E.

Respectfully submitted,

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August 19, 1966.



REPLY BRIEF FOR THE NATIONAL LABOR  
RELATIONS BOARD

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United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,077

TRUCK DRIVERS AND HELPERS, LOCAL UNION 568,  
affiliated with INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND  
HELPERS OF AMERICA, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 20,131

NATIONAL LABOR RELATIONS BOARD, PETITIONER

and

TRUCK DRIVERS AND HELPERS, LOCAL UNION 568,  
affiliated with INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND  
HELPERS OF AMERICA, INTERVENOR

v.

RED BALL MOTOR FREIGHT, INC., AND UNION OF  
TRANSPORTATION EMPLOYEES, RESPONDENTS

On Petition to Review, and on Petition to Enforce, an Order  
of the National Labor Relations Board

United States Court of Appeals  
for the District of Columbia Circuit

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**United States Court of Appeals**  
**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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No. 20,077

TRUCK DRIVERS AND HELPERS, LOCAL UNION 568,  
affiliated with INTERNATIONAL BROTHERHOOD OF  
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TRANSPORTATION EMPLOYEES, RESPONDENTS

---

On Petition to Review, and on Petition to Enforce, an Order  
of the National Labor Relations Board

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REPLY BRIEF FOR THE NATIONAL LABOR  
RELATIONS BOARD

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(1)

## Case No. 20,131

1. While conceding that the amount of overtime work assigned to Teamster employees was sharply reduced after October 5 until the date of the second election, the Company contends that there was no increase in overtime for UTE employees (Co. Br. p. 4). This contention is erroneous, for a comparison of the daily overtime worked before October 5 (September 25 to October 4) with the period thereafter (October 5 to December 3) demonstrates a substantial increase in overtime worked by UTE employees. (J.A. 211). This finding is fully supported by the overtime data contained in the Trial Examiner's Exhibit 1 (Bd. Br. p. 8, n. 5).<sup>1</sup>

2. The Company contends (Br. p. 6) that in comparing the respective amounts of overtime worked by UTE and Teamster employees, the Board erroneously ignored the fact that UTE members were given more exposure to opportunities for overtime work because they were paid at straight-time rates for work on the sixth and the seventh day of the week, while Teamster employees were paid at a premium rate for such work. However, as pointed out in the Board's brief, the Board excluded from consideration overtime worked on Saturday and Sunday, which in practically all cases constituted sixth and seventh work days for Teamsters (J.A. 220; Bd. Br. pp. 10-11, n. 9).

3. The Board found that Red Ball's Dock Foreman Baker announced on October 6, that during "the next two weeks prior to the hearing we are going to let the

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<sup>1</sup> The Trial Examiner's Exhibit 1 has been filed with the Court.

UTE men get all the overtime they want" (Bd. Br. p. 8). The UTE and Red Ball imply that this finding was based merely on employee Smiley's testimony, which they attack as incredible on its face (UTE Br. p. 13; Co. Br. pp. 10-11). As Smiley was vague as to the date of Baker's statement, the Board did not rely upon his testimony (J.A. 211, n. 21; 65). Rather, the Board's finding was based upon the undenied testimony of Salley and Ainsworth. Salley, a UTE member, was told to remain at work because of this policy; that day Teamster Ainsworth heard Baker make a similar remark (Bd. Br. 8). Red Ball further contends that the Board's entire case rests on this announcement. But as the Board indicated in its brief, the Company not only refused to entertain the Teamsters' grievance concerning this discriminatory policy, but took no steps to assure Teamster members that this policy was based on legitimate business considerations. In fact, the Company used this disparity to represent to the employees that the UTE contract provided them with extra take-home pay, and that they should therefore vote for the UTE in the second election (Bd. Br. p. 18). At no time during the hearing did Red Ball tender a reasonable and lawful explanation why the seven Teamster discriminatees were assigned substantially less overtime than their UTE counterparts.

4. Red Ball contends that the election of December 2, 1964, should not have been set aside, and that the UTE should have been certified as the employees' bargaining representative (Co. Br. p. 14). The Regional

Director's action in setting aside the election<sup>1a</sup> does not constitute a final order reviewable by this Court under Section 10. *Big Lake Oil Co. v. N.L.R.B.*, 146 F. 2d 967, 970 (C.A. 5), and cases cited in the Board's brief (Bd. Br. p. 14, n. 15). Accordingly, the disposition of the objections to the election cannot be challenged in this proceeding. Furthermore, the Company is precluded from raising this contention since it is not within the issues stipulated to by the parties as formulated by the prehearing conference stipulation (Bd. Br. p. 1(I)). See *Boilermakers, etc., Local 92 v. N.L.R.B.*, 104 App. D. C. 142, 143, 259 F. 2d 957, 958.

In any event, the Regional Director's action in setting the election aside, because of the discrimination which continued until its very eve, would not call for judicial reversal. The election agreement signed by the Company and both unions (G.C. Ex. 3) provided that the election

shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations, and the applicable procedures and policies of the Board, provided that the determination of the Regional Director shall be final and binding upon any question \* \* \* raised by any party hereto relating in any manner to the election.

The agreement further provided that if any objections to the election were filed:

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<sup>1a</sup> The Board remanded the representation case to the Regional Director for appropriate action; the Board's decision was limited to the unfair labor practice complaints (J.A. 247, n. 1).



The Regional Director shall investigate the matters contained in the objections and issue a report thereon. If objections are sustained, the Regional Director may in his report include an order voiding the results of the election and, in that event, shall be empowered to conduct a new election under the terms and provisions of this agreement at a date, time, and place to be determined by him. \* \* \* The method of investigation of objections \* \* \*, including the question whether a hearing should be held in connection therewith, shall be determined by the Regional Director, whose decision shall be final and binding.

It is well settled that the parties to such an agreement may successfully challenge the Regional Director's determinations thereunder only on a showing that they are arbitrary and capricious or not in conformity with Board policies or the provisions of the Act.<sup>2</sup> The Regional Director's action in setting the election aside fell well within the procedural rules developed by the Board to determine whether objectionable conduct can be relied upon as a basis for setting an election aside. Moreover, these rules represent a reasonable exercise of the Board's "wide degree of discretion in establishing the procedure and safeguards necessary to insure the fair and free choice of bargaining repre-

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<sup>2</sup>See, e.g., *Elm City Broadcasting Corp. v. N.L.R.B.*, 228 F. 2d 483, 485 (C.A. 2); *N.L.R.B. v. Saxe-Glassman Shoe Corp.*, 201 F. 2d 238, 240-242 (C.A. 1); *N.L.R.B. v. General Armature & Mfg. Co.*, 192 F. 2d 316, 317 (C.A. 3) cert. denied, 343 U.S. 957; *N.L.R.B. v. Hood Corp.*, 346 F. 2d 1020, 1022 (C.A. 9), and cases cited; *N.L.R.B. v. Parkhurst Mfg. Co.*, 317 F. 2d 513, 516-517 (C.A. 8); *N.L.R.B. v. J. W. Rex Co.*, 243 F. 2d 356, 358 (C.A. 3); *Diversey Corp. v. N.L.R.B.*, 325 F. 2d 489, 491 (C.A. 7).

sentatives by employees" (*N.L.R.B. v. A. J. Tower Co.*, 329 U.S. 324, 330).<sup>3</sup>

a. In *Great Atlantic & Pacific Tea Company*, 101 NLRB 1118, 1119-1121, the Board held that where a party with pre-election knowledge of improper conduct neither filed charges nor otherwise protested such conduct to the Board prior to the election, the party is nonetheless not held to have waived or acquiesced in such conduct so as automatically to preclude reliance thereon as a basis for setting aside the election. The prior rule of estoppel was found to have hindered rather than facilitated a fair determination of the employees' desires. In the face of improper conduct, the innocent party under the prior rule was required either (1) to request a postponement of the election, thus entailing substantial delay until the effects of the interference had been dissipated, or (2) to proceed to an election despite such improper conduct, and if the interference had its intended effect, the innocent party was barred from seeking another election for at least 12 months. The Board presently adheres to this *A & P* policy, whose reasonableness cannot be seriously questioned. Cf. *Bernel Foam Products Co., Inc.*, 146 NLRB 1277, approved by this Court in *N.L.R.B. v. S.N.C. Mfg. Co.*, — App. D.C. —, 352 F. 2d 361, 363, cert. denied, 382 U.S. 902.

Nonetheless, the Company asserts that the Teamsters have abused the Board's processes by not rais-

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<sup>3</sup> See also, *N.L.R.B. v. Waterman Steamship Corp.*, 309 U.S. 206, 226; *Leedom v. International Brotherhood of Electrical Workers, Local Union No. 108*, 107 App. D.C. 357, 278 F. 2d 237.

ing, at the hearing on objections to UTE's conduct prior to the first election, the improper conduct of Red Ball occurring after that election. Because conduct occurring subsequent to the first election could hardly invalidate that election, to accept the Company's contention in this respect would impose on the Teamsters the type of "choice" which the Board rejected in *A & P*—namely, the choice between delaying the second election because of Company misconduct occurring after the first election, or waiving the right to rely thereon as a basis for objecting to the results of the second election. Implicit in this contention, moreover, is the assumption that the Teamsters on October 20 and 21 should have known that Red Ball would continue to engage in improper conduct until the second election. Under these circumstances, the Regional Director did not abuse his discretion under the consent election agreement in setting the election aside.

b. In *A & P*, the Board also established a policy of refusing to consider any conduct as a basis for setting aside an election, unless such conduct occurred after either (1) the execution of a consent election agreement or a stipulation for certification upon consent election, or (2) the date of issuance by the Regional Director of a notice of hearing in a case where no election was agreed to. The policy was subsequently modified (in *F. W. Woolworth Co.*, 109 NLRB 1446, 1448-1449; and in *Breman Steel Co.*, 115 NLRB 1581, 1582-1583) and eventually overruled (in *Ideal Electric and Manufacturing Co.*, 134 NLRB 1275, 1277-1278). Thus, in *Woolworth*, the *A & P* rule was modified in order to more closely equalize the

time factor in consent elections and contested elections. The Board stated that in the latter type of case, it would consider objectionable conduct only if it occurred after the date of issuance of the decision and direction of election, rather than after the date of issuance of the notice of hearing as specified in *A & P*. In *Breman Steel Company*, 115 NLRB 1581, 1582-1583, the *A & P* rule was further modified, reflecting the policy announced in *Woolworth* of selecting a cut-off date with a view toward minimizing the occasions for setting aside an election for conduct which was remote from the date of the election. In *Breman*, the cut-off date with respect to a second election was held to be the date on which the Board set aside the first election and directed a second election rather than the date of the execution of the election agreement. 115 NLRB at 1583, n. 7.

However, in *Ideal Electric and Manufacturing Company*, 134 NLRB 1275, the Board overruled *Woolworth*. While recognizing that the purpose of *Woolworth* was to establish a cut-off date which would disallow consideration of remote objectionable conduct, the Board pointed out that such a rule prevented consideration of much of the election campaign activity, and that it enhanced the possibility that a party might engage in improper conduct prior to the cut-off date. To cure this defect, the Board held that in contested election cases it would consider any objectionable conduct occurring after the Board's processes had been invoked, thereby extending the cut-off date to the date on which the election petition had been filed. Sub-

sequently, in *Goodyear Tire & Rubber Company*, 138 NLRB 453, this same cut-off date was adopted for consent elections. The reasonableness of this policy as applied to the instant election can scarcely be questioned, since the Company's objectionable conduct continued until the very eve of the election.<sup>4</sup> Nor is there merit to the Company's contention that the *Goodyear* rule permits an objecting party to indefinitely delay the certification of a bargaining representative by continuously urging stale claims of improper conduct. For even where improper conduct occurs after the *Goodyear* cut-off date, if the Board finds that the conduct is too remote, the election will not be set aside. *West Texas Equipment Company*, 142 NLRB 1358, 1360. Clearly, no claim of remoteness would be sustainable here.

5. The UTE asserts (br. pp. 3, 9) that absent its agreement to the consent election, no election could have been held since UTE was the pre-existing union under a contract at the Airport Drive terminal. Whatever merit there may have been to this belated contention, it is clear that by executing the consent agreement election (G.C. Ex. 3), the UTE conceded that there was a question of representation to be determined by the Board. *International Harvester Company*, 87 NLRB 1123, 1126-1127. This agreement is a contract binding upon all the parties. *N.L.R.B. v. Carlton Wood Products Co.*, 201 F. 2d 863 (C.A. 9);

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<sup>4</sup> Cf. *Breman Steel*, 115 NLRB 1581, relied on by the Company, where the conduct occurred 4½ months prior to the election.

36 ALR 2d 1170, 1178-1179. To permit the parties to an agreement for an election to question the results of the election on the ground that it should not have been held would sanction futile elections, invite abuse of the Board's processes, and defeat, rather than effectuate, the purposes of the Act. *International Harvester Company, supra*; *Semi-Steel Casting Co. v. N.L.R.B.*, 160 F. 2d 388, 391 (C.A. 8), cert. denied, 332 U.S. 758.<sup>5</sup>

In any event, the UTE's contention is questionable on its merits. Where the operations of two or more plants become integrated under centralized managerial control following a merger or consolidation of separate corporate entities, the Board regards the resulting operation as comparable to an entirely new operation. *Hooker Electrochemical Company*, 116 NLRB 1393, 1395; *Universal Metal Products Corporation*, 128 NLRB 442, 444-445. Since the transfer of the former Abbey Street employees to the Airport Terminal would appear to involve such a merger of the two terminals rather than merely an accretion to the Airport unit, the UTE contract with Red Ball would probably not have barred an election even if the UTE had sought to raise it. *Greyhound Garage of Jacksonville, Inc.*, 95 NLRB 902, 904-905; *Hooker Electrochemical, supra* at 1393, n. 2. Cf. *Westinghouse Electric Corporation*, 144 NLRB 455. Indeed,

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<sup>5</sup> Cf. Section 9(c) (4) of the Act, which provides, "Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board".



it is reasonable to suppose that UTE's agreement to an election was motivated at least partly by the belief that its present contract-bar claim would have been futile.

### CONCLUSION

For the foregoing reasons, as well as for the reasons set forth in our opening brief, we respectfully submit that a decree should issue denying Local 568's petition for review in No. 20,077 and granting enforcement of the Board's order in No. 20,131.

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September 1966.



**BRIEF FOR THE NATIONAL LABOR RELATIONS  
BOARD**

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**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 20,077

---

TRUCK DRIVERS AND HELPERS, LOCAL UNION 568, affiliated with  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN, AND HELPERS OF AMERICA, PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

---

No. 20,131

---

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

and

TRUCK DRIVERS AND HELPERS, LOCAL UNION 568, affiliated with  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN, AND HELPERS OF AMERICA, INTERVENOR,

v.

RED BALL MOTOR FREIGHT, INC., and UNION OF TRANSPORTATION  
EMPLOYEES, RESPONDENTS.

---

ON PETITION TO REVIEW, AND ON PETITION TO ENFORCE,  
AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

---

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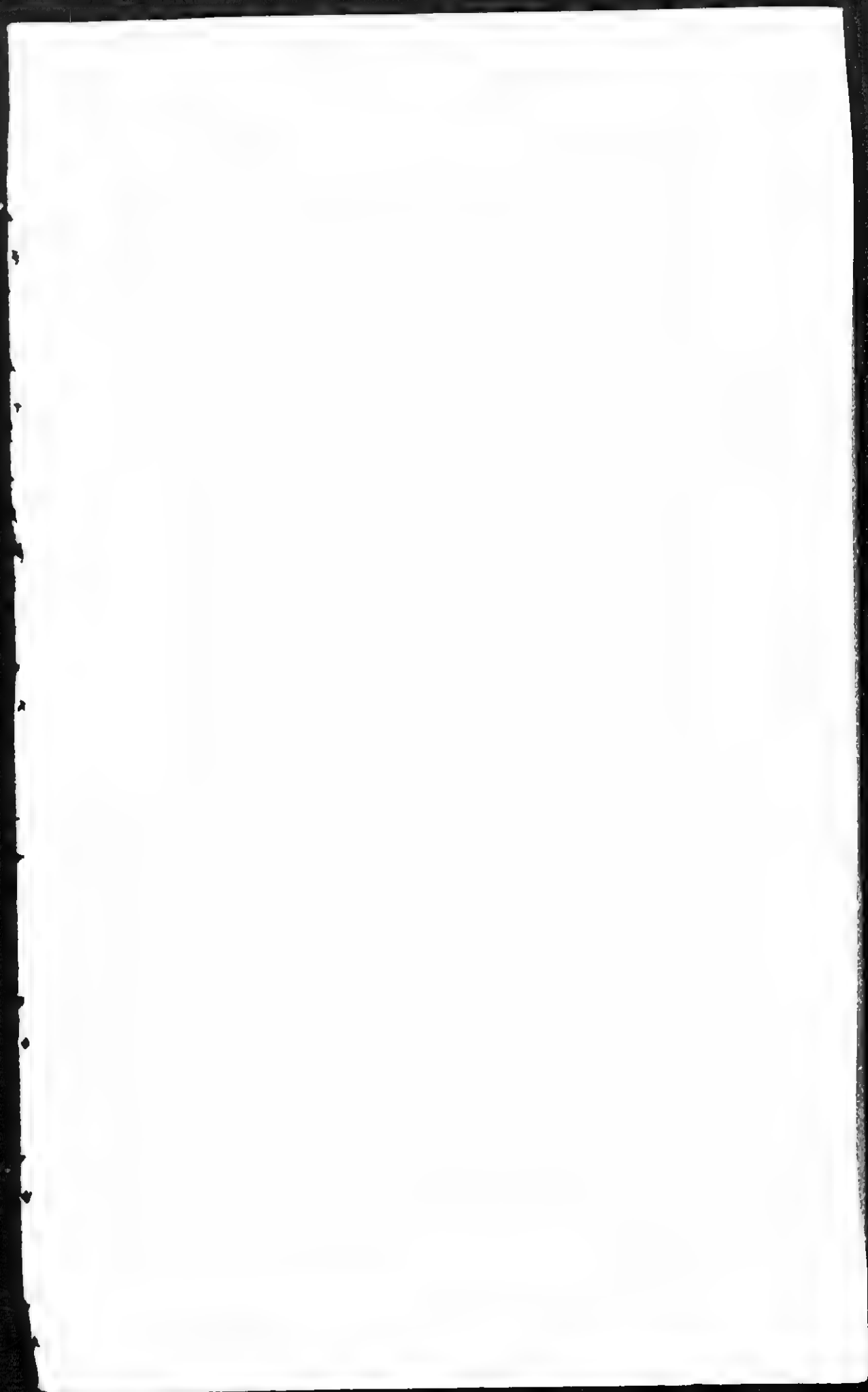
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### STATEMENT OF QUESTIONS PRESENTED

The questions presented, as formulated in the prehearing conference stipulation, are set forth at pp. 1-2 of the Joint Appendix.

A. The issues in Case No. 20,077 are as follows:

1. Whether the Board properly found that the Company did not discriminate against certain employees in the assignment of overtime, in violation of Section 8(a)(1) and (3) of the Act.

2. Whether the relief granted by the Board was sufficient to effectuate the purposes of the Act.

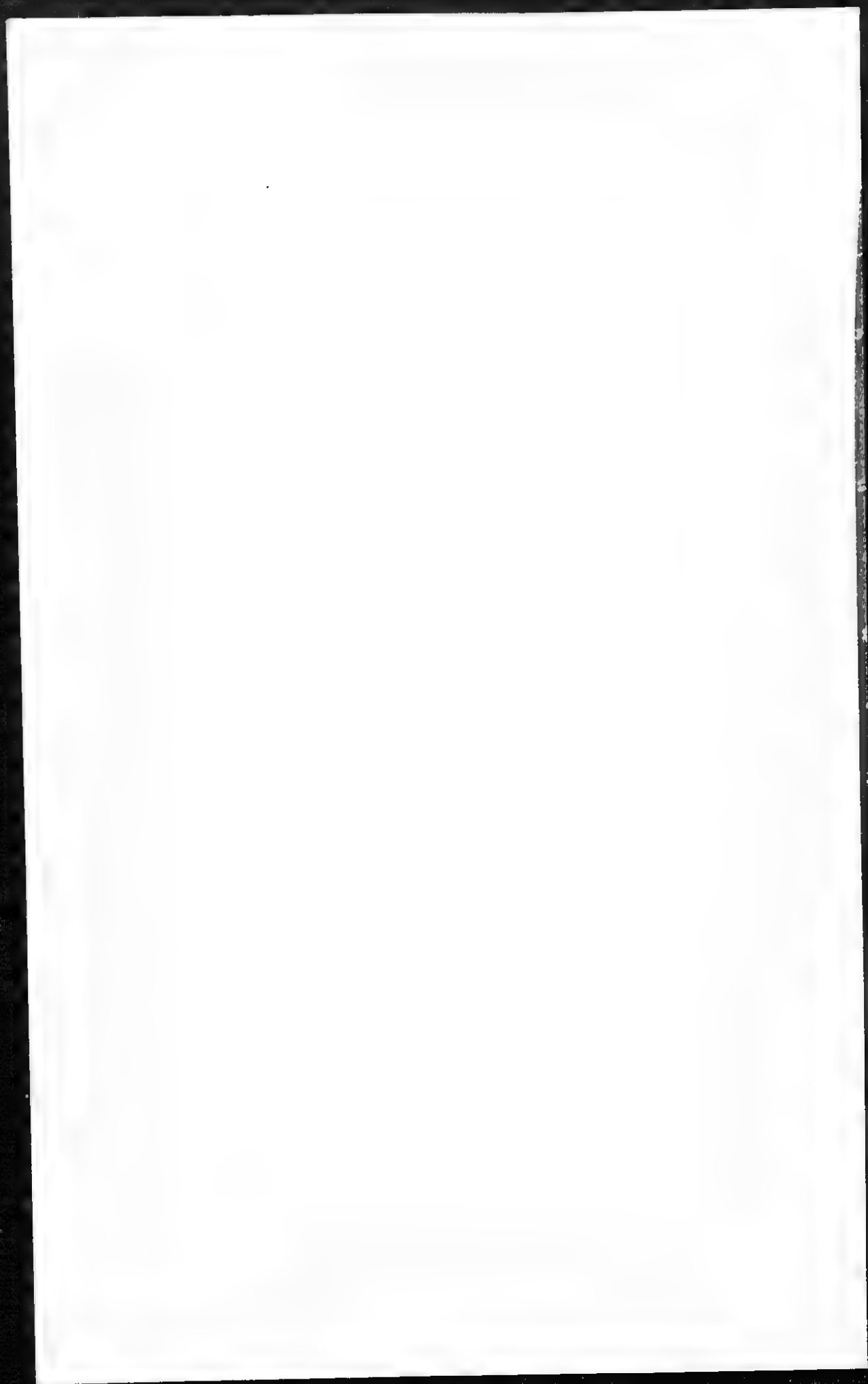
B. The issues in Case No. 20,131 are as follows:

1. Whether substantial evidence on the whole record supports the Board's finding that the Company discriminated against certain employees in regard to the assignment of overtime, in violation of Section 8(a)(1) and (3) of the Act.

2. Whether substantial evidence on the whole record supports the Board's finding that the Company unlawfully assisted the Union of Transportation Employees in violation of Section 8(a)(2) of the Act.

3. Whether substantial evidence on the whole record supports the Board's finding that the Union of Transportation Employees violated Section 8(b)(1)(A) of the Act by threatening to discriminate against certain employees, and by promising preferential treatment to other employees, in disregard of its duty of fair representation.

4. Whether the Board's remedy was proper under the Act.



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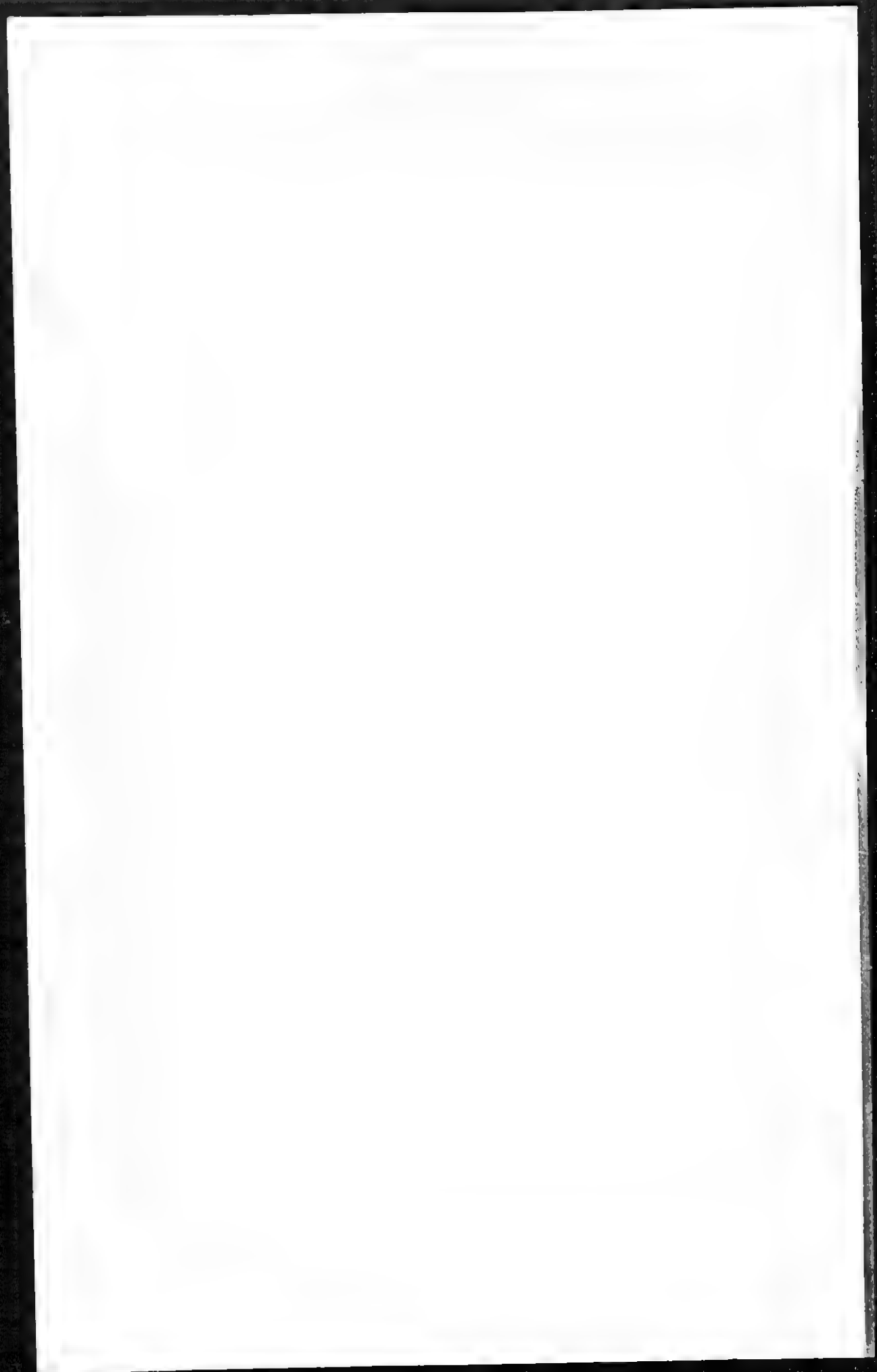
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# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 20,077

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TRUCK DRIVERS AND HELPERS, LOCAL UNION 568, affiliated with  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN, AND HELPERS OF AMERICA, PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

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No. 20,131

---

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

and

TRUCK DRIVERS AND HELPERS, LOCAL UNION 568, affiliated with  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN, AND HELPERS OF AMERICA, INTERVENOR,

v.

RED BALL MOTOR FREIGHT, INC., and UNION OF TRANSPORTATION  
EMPLOYEES, RESPONDENTS.

---

*ON PETITION TO REVIEW, AND ON PETITION TO ENFORCE,  
AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD*

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BRIEF FOR THE NATIONAL LABOR RELATIONS  
BOARD

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## STATEMENT OF THE CASE

Case No. 20,077 is before the Court upon the petition of the Teamsters<sup>1</sup> to review portions of an order of the Board, issued against Red Ball Motor Freight, Inc. (herein

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<sup>1</sup> Truck Drivers and Helpers, Local Union 568 is referred to as the "IBT," "Teamsters" or "Local 568."

called "the Company" or "Red Ball") and Union of Transportation Employees (herein called the "UTE") on March 30, 1966, pursuant to Section 10(c) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, *et seq.*). In Case No. 20,131, the Board has petitioned for enforcement of its order. The Board's decision and order are reported at 157 NLRB No. 107 (J.A. 247-248, 193-246).<sup>2</sup> The cases have been consolidated for the purposes of briefing and argument. This Court has jurisdiction of the proceeding under Section 10(e) and (f) of the Act.

### I. The Board's Findings of Fact

The Board found that the Company violated Section 8(a)(1) of the Act by promising preferential assignment of overtime to members of the UTE because of their union membership. The Board also found that the Company assisted the UTE by preferentially assigning overtime work to UTE members, and discriminated against seven individual employees by denying them overtime because of their membership in the Teamsters, in violation of Section 8(a)(1), (2) and (3). In addition, the Board concluded that the UTE violated Section 8(b)(1)(A) by promising and threatening to take action, in connection with employee seniority rights, in contravention of a statutory representative's duty to represent all unit employees fairly. Finally, the Board dismissed portions of the complaint alleging that the Company discriminated against certain members of the Teamsters, other than the seven employees referred to above, in the assignment of overtime work. The evidence upon which the Board based its findings is summarized below.

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<sup>2</sup> References designated "J.A." are to the Joint Appendix. Whenever a semicolon appears, the references preceding the semicolon are to the Board's findings; those following are to the supporting evidence. "T.E.X." and "G.C.X." refers to the Trial Examiner's and General Counsel's Exhibits not reproduced in the Joint Appendix.



*A. Red Ball acquires the Abbey Street terminal; the parties agree to a consent election*

Couch Motor Lines, Inc., an independent trucking company, operated a trucking franchise to the east and south of Shreveport, Louisiana, where it maintained an installation known as the Abbey Street terminal (J.A. 195, 199; 130-131, 15-16). In 1962, Red Ball, which owned the Airport Drive terminal in Shreveport, purchased Couch and continued to operate the Abbey terminal through a subsidiary corporation—Red Ball Motor Freight (Southeast); the operating authority of its Airport terminal was then limited to the north and west of Shreveport (*Ibid.*). At the time of the acquisition, approximately 30 local drivers and dock employees of Couch were represented by the Teamsters; the UTE represented about 50 local drivers and dockworkers at Airport Drive (J.A. 195).

On August 20, 1964, Red Ball informed both unions that it would close the Abbey Street terminal on September 15, 1964, and thereafter all of its Shreveport operations would be conducted at the Airport terminal (J.A. 195-196; G.C. X. 2). The parties met, and on September 1, 1964, agreed that Red Ball would file a representation petition to determine which union would represent the combined group of local drivers and dockworkers employed at the consolidated facility following the merger (J.A. 196). The parties further agreed that after the date of certification by the Board pursuant to the consent election, the employees would be covered by the existing contract of the successful union (*Ibid.*). Red Ball agreed to negotiate with whichever union was selected "on all collateral issues arising from the integration of employees and/or the closing of the Abbey Street terminal" (*Ibid.*).

*B. The UTE threatens to disregard its duty of fair representation; the election is set aside*

Following the agreement of the parties to enter into a consent election, the UTE held meetings with its members on August 30, September 3 and September 8, 1964. During

these sessions, the issues in the election were discussed; among these, the UTE's position regarding the relative seniority rights of the two groups of employees was explained (J.A. 202-203; 44-46, 50-51, 32-34, 35). In a series of meetings on September 8 attended by UTE President Scruggs, Business Representative House, and small groups of UTE members, Scruggs told the members that the seniority issue would be resolved differently depending on which union won the election (J.A. 202-203; 118-119, 33, 44-46, 114). Scruggs prepared two seniority rosters which he posted on the wall of the meeting room (J.A. 202-203; 41, 119). The first list placed all UTE members above all Teamsters members; the second list dovetailed both groups of employees according to their original date of hire with either company (J.A. 202-203; 33-34, 45-46, 120, 35). If the UTE won the election, Scruggs explained, the first list would govern seniority and all Teamster members would be placed below the UTE members; if the Teamsters won, the groups would be dovetailed (J.A. 202-203; 43-44). If they wanted to retain their seniority, Scruggs remarked, they had better vote for the UTE (J.A. 202-203; 34). According to Scruggs, 15 or 16 Teamsters had greater seniority (on a dovetail basis) than UTE members (J.A. 202-203; 35-36, 43-44), and since he had allegedly been told by Red Ball Manager Bailey that fewer men would be needed in the consolidated operation, approximately 15 men would have to be laid off after the merger (J.A. 202-203; 34, 39). Scruggs pointed out to one employee that he ranked 28th on the list which gave the UTE members preferential seniority, whereas he was 53rd on the dovetailed list. If 15 men were laid off, Scruggs said, the employee "might stand a chance of staying on." (J.A. 202-203; 45-46.) Representative House told them that he would protect their seniority against "all others" (J.A. 119).

On September 9, the day before the first election, the UTE distributed a letter, signed by its attorney, to all employees of Red Ball at both terminals. The letter was in answer to a letter previously distributed by the Teamsters (J.A. 204; 25). The Teamsters' letter had stated,

in part, that "whichever union wins the election will be under a duty of representing fairly all the employees in the bargaining unit." It suggested that the integration of the employees' seniority based on the length of service at either terminal would satisfy that duty (J.A. 204, n. 13; 190-102). The UTE's letter of September 9 rejected integration of the seniority rosters, stating,

When the Union of Transportation Employees wins the election, the Teamsters Union will have no bargaining rights and no say-so at all. You can rest assured that the Union of Transportation Employees will *never* agree that its members will go to the bottom of any seniority list and that your seniority will be respected and protected against all others. Do not be fooled by long, legal, complicated letters. This is a plain statement of the position of the Union of Transportation Employees. (emphasis in original) (J.A. 204; 180-181).

On September 10, the consent election was held. Thirty-seven ballots were cast for the Teamsters, 39 for UTE and 2 were challenged. The Teamsters filed timely objections, contending, *inter alia*, that UTE conduct had rendered a fair election impossible. (J.A. 197). On the basis of these objections, a hearing was held; and the Regional Director, finding merit in one of the objections, set aside the election and directed a second election (*Ibid.*).<sup>3</sup>

### C. *The operations at the consolidated terminal*

On September 21, 1964, Red Ball closed the Abbey Street terminal and consolidated its operations with those at the Airport terminal (J.A. 197; 12); all of the Red Ball employees at Abbey Street were transferred to Airport. Since the representation question remained unresolved at the time of the consolidation, Red Ball decided to apply the

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<sup>3</sup> The ground on which the first election was set aside formed the basis for the charge and complaint in Case No. 16-CB-249 (J.A. 197 n. 3).

UTE and IBT contracts to the employees according to their respective union affiliation although they were now all merged into a single operating group (J.A. 198, 209-210; 134). While the rates of pay provided under the two agreements were substantially the same, the UTE contract guaranteed 8 hours of daily work, and 42 hours of weekly employment; the Teamsters contract guaranteed a 40-hour work week to be worked in five consecutive 8-hour days (J.A. 199 n. 6; 137). Under the UTE contract, overtime was to be paid at the rate of time and one-half after 10 hours in any one day, but no provision was made for weekly overtime for the sixth or seventh workday as such. In contrast, under the Teamster contract, overtime, at a rate of time and one-half, was to be paid for work in excess of 8 hours per day or 40 hours per week (J.A. 198-199; 136-137); in addition, time and one-half was to be paid for all work on the sixth day, and double time for the seventh (J.A. 199; 136-137, 184).

During the first two weeks following the consolidation of operations, the Teamsters and UTE employees worked together for approximately the same number of hours (J.A. 210; 132-133, 63). This period was considered a training period for both groups of employees (J.A. 210; 132-133); because the territories covered by the two terminals had differed prior to the consolidation, both groups were required to learn new points of origin and destination for freight. Also, the methods of handling freight at Airport differed in certain respects from that previously used at the Abbey Street terminal (J.A. 200).<sup>4</sup>

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<sup>4</sup> In the Abbey Street operation, dock employees unloaded freight from incoming trailers into carts which they pushed by hand and unloaded into outgoing trailers. Because of limited dock facilities, outgoing trailers had no fixed locations and dock employees were required to ascertain the location of the appropriate trailer for each load. In contrast, at the Airport terminal, dock workers attach the loaded carts to a tow-veyor (an automatic chain device) which mechanically pulls the carts around the dock until detached. The loaded carts are tagged with coded designations to indicate the outgoing trailers on which their contents are to be loaded. The Airport terminal can accommodate many more trailers than could the Abbey

The basic workday at the Airport terminal commences around 2 a.m. and continues until 7:30 or 8:30 p.m., although the terminal is open 24 hours a day (J.A. 201; 137, 149). The early morning crews consist largely of dock workers and checkers who unload inbound trailers which have arrived during the night (J.A. 201; 137-138). Most of the local drivers begin to arrive a few hours later and continue to report at hourly intervals for several hours. These local drivers are assigned to bobtails (four-wheel pickup trucks) or tractor-trailers (J.A. 201; 145, 147, 53, 60). Bobtail drivers pick up and deliver smaller loads; trailer drivers usually handle large loads, including full trailer shipments. Both classifications of drivers regularly perform dock work at the terminal while waiting for their trucks to be loaded and upon their return to the terminal, either before the end of a shift or on overtime (J.A. 201). The workload at the terminal varies throughout the day according to the volume of incoming freight from other terminals and the outbound shipments brought back to the terminal by local drivers (J.A. 202; 137, 153). The heaviest need for overtime generally occurs toward the close of the basic workday (J.A. 202, 224; 135, 139, 140).

*D. The Company promises overtime to UTE members and denies overtime to Teamster members*

On Friday, October 2, the last day of the training period following the merger, Red Ball held two employee meetings on the dock at which it announced that overtime costs were too high, and that the Company was therefore going to eliminate all premium pay unless absolutely necessary (J.A. 210; 133-134, 153, 146). The Company further stated that until the question of representation was settled, it would maintain in effect the terms and conditions of employment which had existed prior to the consolidation (J.A.

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Street facilities so that outgoing trailers have regularly assigned platform positions according to their destination. Thus, at the appropriate locations, dock employees detach the carts from the tow-veyor and, according to their designations, unload them on the appropriate trailers. (J.A. 199-200; 148, 143-144, 57.)

210; 134, 162); thus, the former Abbey Street employees would be governed by the Teamster contract, the Airport employees by the UTE agreement (J.A. 210; 96, 47, 71, 134, 162). From the following Monday, October 5, to the date of the second election, December 10, there was a sharp reduction in the daily overtime worked by Teamster employees, and a substantial increase for UTE employees (J.A. 211).<sup>5</sup> On October 6, Red Ball's Dock Foreman Baker told UTE employee Salley to continue working after his regular quitting time because during "the next two weeks prior to the hearing we are going to let the UTE men get all the overtime they want" (J.A. 211; 46, 139); that day, Teamster employee Ainsworth heard Baker make a similar remark (J.A. 211; 71-72, 73-74). A day or two later, the Teamsters filed a grievance with Red Ball requesting, *inter alia*, that the Company assign overtime to Teamster employees on the same basis as it was granted to UTE employees (J.A. 211; 73, 105-106). Red Ball refused to entertain the grievance in accordance with its position that neither contract was then in force and effect (J.A. 211-212; 103-104, 162).

*E. The Company discriminatorily deprives seven  
Teamster members of overtime*

Following the two-week training program during which Teamster and UTE members worked an equal amount of hours (J.A. 210; 133), there was a sharp decline in the amount of overtime allotted to Teamsters. The Board found that seven Teamster members were discriminatorily denied overtime work because of their union membership (J.A. 219-231).

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<sup>5</sup> The overtime data presented in tabular form in the Trial Examiner's Decision (J.A. 213-218) are drawn from an exhibit compiled by the Examiner (T.E.X. 1) which is based upon record testimony and exhibits introduced into evidence. Because the accuracy of the Examiner's compilation is not disputed by the parties, the voluminous record evidence upon which it is based is not reproduced in the Joint Appendix.



### 1. Teamster Steward Bud Giddens

Teamster Steward Giddens and member Hicks, and UTE members Lofton and Green, are the only four trailer drivers who are scheduled to end their straight time hours at 4:30 p.m. (J.A. 222, 215-216; 86-87).<sup>6</sup> All were paid at the same hourly rate and performed the same kind of work (J.A. 223, 215-216; 88-89). According to Red Ball's District Manager Brandon, UTE members Lofton and Green did not want to work overtime because of their car pooling arrangements (J.A. 223; 142, 158).

Nevertheless, from the period October 5 to December 3, Lofton and Green worked 19.31 and 19.94 hours of overtime, respectively (J.A. 215, 222-223). During the same period, Teamster Giddens, who had received all the overtime that he wanted during the preceding training program (J.A. 87, 89-90), had his overtime hours reduced to less than one-third of those afforded to the UTE members—5.43 hours (J.A. 222-223, 216; 87-88). Giddens was told by the Company's dock foreman to clock out at the end of his regular shift while Green and Lofton, the UTE members, remained on overtime work—mostly on the dock (J.A. 222; 88-89). On one occasion following Foreman Baker's remark that he would assign UTE members all the overtime they desired, Giddens was in the process of loading his truck at a warehouse when his regular shift time was about to end (J.A. 212, 222 n. 33; 111-113). Green, whose shift ended at the same time, went out to the warehouse and informed Giddens that he had been sent out to relieve him and to instruct Giddens to return to the terminal (*Ibid.*). Green remarked, "I am on overtime and

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<sup>6</sup> A UTE member worked 10 hours of straight time under the UTE contract, a Teamster member 8 hours. While under the UTE contract, UTE members were guaranteed only a 42-hour week, the payroll records demonstrate that as a practical matter they worked 10 or more hours every day (J.A. 221 n. 29).

The Company's time cards are expressed in decimals based on a twenty-four hour time clock. Thus, for example, a quitting time of 16.50 is 4:30 p.m. Similarly, 6.78 hours of overtime is approximately equivalent to 6 hours and 47 minutes (J.A. 214, n. 24; 109).

you are on overtime. I don't know why they sent me out here'' (J.A. 113). Giddens returned to the terminal and clocked out, while Green remained at the warehouse, completing Giddens' work on overtime (J.A. 212; 112).<sup>7</sup>

2. *Teamster members Milton Nash, Gus Rachel, Jr., and Philip Thompson*

The greatest need for overtime work generally arises around 6:30 p.m., which is the busiest time of the day at the terminal (J.A. 224; 135, 139, 140). A number of drivers, both UTE and Teamster members, had a common quitting time of 6:30 p.m. (18.50) (J.A. 224, 216-217).<sup>8</sup> Of these, eight drove bobtail trucks, all at the same pay rate (*Ibid.*).

During the training period, these three Teamsters worked substantial overtime. Thus, during the five regular work days<sup>9</sup> from September 25 through October 2,

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<sup>7</sup> Teamster Hicks, who received 12.42 overtime hours during this period, worked most of his overtime while he was on trucks away from the terminal (J.A. 223, n. 35; 156, 167-168). He followed the practice of immediately clocking out at the end of his regular shift upon returning to the terminal, without checking with his supervisor (J.A. 223; 160, 156, 167). Thus, supervisor Brandon did not have the opportunity to assign Hicks dock-work overtime. (*Ibid.*). The Board dismissed that portion of the complaint alleging that Hicks was discriminatorily denied overtime (J.A. 224).

<sup>8</sup> The Board also considered two other employees with a common quitting time of 6:30 p.m. (18.50). *Daily*, a UTE member, who worked 4.81 hours of overtime during this period, had a quitting time of 18.50 on Thursday and Friday only (J.A. 224, n. 37, 217). *Daily* was a hostler whose job was to spot, hook and unhook tractors and trailers (J.A. 224, n. 37; 107, 144, 101). Since his duties and quitting times were not comparable with those of bobtail drivers, the Board found that no valid overtime comparison could be made (J.A. 224, n. 37). *May*, a Teamster employee who was principally a trailer driver, worked only 7.84 overtime hours, but he preferred not to work overtime and expressed this dislike to his supervisors (J.A. 224, n. 38; 59, 55, 142). Therefore, the Board dismissed that portion of the complaint which alleged that May was discriminatorily denied overtime (J.A. 224, n. 38).

<sup>9</sup> In comparing the respective overtime worked by UTE and Teamsters members, the Board excluded from consideration over-

Nash, Rachel and Thompson worked from 7 to 9 overtime hours each. However, during the following ten *weeks*, between Foreman Baker's announcement and the second election, they each received less than 50 per cent of the overtime worked during the five work *days* preceding Baker's announcement—4.44, 3.53 and 3.04 hours (J.A. 216-217, 225). In contrast, four of the five UTE bobtail drivers worked over 20 overtime hours, and the fifth worked nearly 16 overtime hours, during this 10-week period—four or five times as much as the Teamster members (*Ibid.*).<sup>10</sup>

3. *Teamster members R. J. Gremillion, Raymond Lemoine and Joseph Fuller*

Twelve employees had a common quitting time of 7:30 p.m. (19.50). These employees consisted of eight UTE and one Teamster (Gremillion) bobtail drivers, two Teamster trailer drivers (Lemoine and Creamer) and one Teamster dockman (Fuller). All were paid at the same regular rate of \$3.14 per hour, except Fuller, the Teamster dockman (\$2.98) and Davis, a UTE bobtail driver (\$2.84) (J.A. 217, 227).

Gremillion, Lemoine and Fuller each worked over 7 hours of overtime during the five regular work days preceding Baker's announcement; for the 10-week period thereafter, they were assigned a total of 9.64, 11.90 and 8.60 overtime hours, respectively. (J.A. 217). In contrast, the UTE members worked from nearly 23 to over 33 overtime hours each during the latter period—three or four times as much as the Teamster members (*Ibid.*).<sup>11</sup>

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time worked on Saturday and Sunday throughout the entire period. Under the Teamsters contract, all sixth and seventh day work was to be paid at a premium rate, whereas under the UTE contract the first 10 hours of work on those days was paid at the regular rate. For economy reasons, Red Ball assigned weekend work to UTE employees (J.A. 220; 135, 136-137, 131-132).

<sup>10</sup> Garrett, the fifth UTE member, was on vacation for the last two weeks in November, and was absent from work on other days when overtime was worked by other UTE members (J.A. 226, n. 41).

<sup>11</sup> The fourth Teamster, Creamer, while working 5.36 overtime

*F. Red Ball uses its discrimination with respect to overtime as a basis for urging its employees to vote for the UTE in the second election.*

Shortly after the Regional Director upheld the Teamsters' objections to the first election, Rad Ball's District Manager Bailey, by letter of November 13, notified all of the Shreveport employees of its preference for the UTE. After six weeks had passed—during which time Teamster members' overtime had been greatly reduced, and UTE members had been assigned a substantial amount of premium work—Bailey pointed out that “you have all worked side by side long enough to know in your own minds that the UTE contract assures all of you more take home pay.” The letter continued,

The Teamster contract restricts you to eight hours per day, and 40 hours per week by its penalty time provision. Those of you who have worked at the Abbie [sic] Street dock know this.

We think you should stick by your own convictions and vote for the UTE contract as you did before so your families can enjoy the extra take-home pay (J.A. 212-213, 231; 188-189).

On November 27 Bailey sent another letter to all Red Ball employees “to solicit your vote in the Wednesday election for the Union of Transportation Employees.” After favorably comparing the weekly wages earned under the UTE contract with those earned under Teamster contracts in other locations Bailey concluded that “we know that you know that the UTE contract is the best labor agreement,” (J.A. 213; 181-182). The day before, the election, December 1, a telegram from Henry English, Red Ball's president, was posted at the terminal. The telegram stated that “Mr.

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hours during this period, ordinarily refused to work overtime because he wished to devote time to a furniture store in which he had an interest (J.A. 229; 155, 142). Therefore, the Board dismissed the General Counsel's allegation that Creamer had been discriminatorily denied overtime (J.A. 229).

Bailey expressed my feelings with reference to the union contracts and I support him 100 per cent. I deeply appreciated the vote in the last election and hope this next one will be even more in favor of the UTE contract" (J.A. 213; 182).

The second election was held on December 2, 1964, in which 36 ballots were cast for the Teamsters, 38 for the UTE, 1 for neither union, and 6 were challenged. The Teamsters, on the basis of the Company's discriminatory assignment of overtime, filed timely objections. The Regional Director, on June 4, 1965, directed a hearing on certain objections, to be consolidated with the unfair labor practice hearing in the instant case (J.A. 197-198).<sup>12</sup>

## II. The Board's Conclusions and Order

The Board concluded that the UTE had announced a bargaining policy with respect to preferential seniority in derogation of a statutory representative's duty to represent all unit employees fairly. Accordingly, the Board found, the UTE violated Section 8 (b) (1) (A) of the Act by promising and threatening to take such action in order to obtain the votes of the unit majority, whom this policy would unfairly favor at the minority's expense (J.A. 207-209). The Board also concluded that the Company violated Section 8(a)(1), (2) and (3) of the Act by promising preferential assignment of overtime to UTE members; and by denying overtime to seven employees<sup>13</sup> because they were members of the Teamsters and not of the UTE (J.A. 222-236).<sup>14</sup>

<sup>12</sup> These objections contain substantially the same allegations as the complaint in Case No. 16-CA-2226 (J.A. 197-198).

<sup>13</sup> Giddens, Nash, Rachel, Thompson, Gremillion, Lemoine, and Fuller.

<sup>14</sup> The Board dismissed those portions of the General Counsel's complaint which alleged that the Company discriminated in the assignment of overtime against additional Teamster members (J.A. 231-232, 238). In Case No. 20,077, the Teamsters challenge this ruling. The evidence relating to these employees is summarized on pp. 10 nn. 7-8, 11-12 n. 11, *supra*, and pp. 35-36, *infra*.

The Board ordered the Company and the UTE to cease and desist from the unfair labor practices found, and from infringing on the employees' protected rights in any like or related manner. Affirmatively, the Board ordered the Company to make the seven Teamster members whole for the overtime of which they were discriminatorily deprived between October 5 and December 2, 1964, and to post an appropriate notice at its plant. The Board also ordered the UTE to post an appropriate notice at its offices. (J.A. 239-246).<sup>15</sup>

#### SUMMARY OF ARGUMENT

##### I

The record evidence amply warranted the Board in finding that the Company violated Section 8(a)(1), (2), and (3) of the Act by promising and granting preference to UTE members in the assignment of overtime work. The Company announced that UTE members would get all the overtime they wanted, and effectuated this announcement by awarding far less overtime to seven Teamster members than to comparable UTE members, without any evidence suggesting lawful reasons therefor. Moreover, the Company pointed to this disparity as a basis for the employees' voting for the UTE in order to obtain more take-home pay.

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<sup>15</sup> The UTE notices are also to be posted at Red Ball's offices, Red Ball willing (J.A. 240).

As previously noted, the Teamsters filed objections to the second election based upon some of the same conduct put at issue in the unfair labor practice complaint. The Regional Director consolidated the hearing on objections and the unfair labor practice hearing (J.A. 193). The Board adopted the Examiner's recommendation that the second election be set aside (J.A. 247 n. 1, 243, 237). The propriety of this action is not at issue before this Court. See *Daniel Construction Company v. N.L.R.B.*, 341 F. 2d 805, 810 (C.A. 4), cert. denied, 382 U.S. 831; *Bonwit Teller, Inc. v. N.L.R.B.*, 197 F. 2d 640, 642, n. 1 (C.A. 2), cert. denied, 345 U.S. 905; *AFL v. N.L.R.B.*, 308 U.S. 401, 406, 409.



## II

The evidence also supports the Board's finding that the UTE violated Section 8(b)(1)(A) by promising and threatening that if it were selected as the bargaining representative of the merged group of employees, it would place all Teamster employees below UTE employees on the combined seniority roster. The UTE adopted this position without receiving and considering arguments advanced on behalf of all competing factions, and without conscientiously balancing the relative equities of the two groups of employees. Instead, it unilaterally sought to impose the entire burden of loss of relative seniority rights upon the politically inferior Abbey group, notwithstanding their many years of service in jobs being added to those performed at the Airport terminal, in order to gain the support of the numerically dominant Airport employees. Indeed, there was no showing by the UTE to suggest that a reasonable basis existed for this classification. In these circumstances, it is clear that the UTE threatened to breach its statutory duty of fair representation. Accordingly, the UTE's promise and threat of unfair treatment restrained and coerced Red Ball employees, in violation of Section 8(b)(1)(A).

## III

The Teamsters contend that the Board erred in failing to find that the Company unlawfully denied overtime to certain employees, other than seven individuals, because of their Teamsters membership. In the circumstances of this case, the Board could properly conclude that the mere fact that UTE members generally worked more overtime than the Teamsters was an insufficient basis upon which to find that the Company denied overtime to all Teamster employees for unlawful reasons. To make a valid comparison between overtime worked by both groups of employees required a consideration of the differences in duties, volume of work, hours and rates of pay of individual employees. After making this analysis, the Board properly

concluded that only seven Teamster members were discriminatorily denied overtime.

Finally, the Teamsters urge that the Board's order was inadequate and will not effectuate the purposes of the Act. It contends that the Board abused its discretion by failing, *inter alia*, to order the Company to cease recognizing and to disestablish the UTE. However, since there was no finding that the UTE was a dominated union, the remedy of disestablishment is clearly inappropriate. Moreover, the Company is recognizing both unions on a members-only basis, and a new election will be held as soon as the effects of the Company's unfair labor practices have been dissipated. Under these circumstances, there is no showing that the instant order directing the Company to cease assisting the UTE by its method of assigning overtime, and infringing upon its employees' organizational rights in any like or related manner, will not reasonably accomplish the same desired result as an order requiring the Company to cease recognizing the UTE. Absent such a showing, the courts will not intervene to supplement the Board's choice of remedial provisions.

#### ARGUMENT

##### **I. Substantial Evidence on the Whole Record Supports the Board's Finding That the Company Violated Section 8(a)(1), (2) and (3) of the Act by Promising and Granting Preference to UTE Members in the Assignment of Overtime Work.**

There can be no question that an employer violates Section 8(a)(1) of the Act by making promises of benefit, including the assignment of overtime, in order to encourage employee support for a union favored by the employer, or to discourage activity for a rival union. *Reserve Supply Corp. of L. I., Inc. v. N.L.R.B.*, 317 F. 2d 785, 787-788 (C.A. 2); see also *N.L.R.B. v. Exchange Parts Co.*, 375 U.S. 405. Likewise, where the employer carries out his promises and threats by preferentially assigning overtime to one group, and depriving another group of such benefits, because of their union membership, he acts in violation of

Section 8(a)(1) and (3). *Trumbull Asphalt Co. of Delaware v. N.L.R.B.*, 314 F. 2d 382, 383 (C.A. 7), cert. denied, 374 U.S. 808; *N.L.R.B. v. Guild Industries Mfg. Corp.*, 321 F. 2d 108, 110-111 (C.A. 5); *N.L.R.B. v. Unified Industries Inc.*, 273 F. 2d 431, 432 (C.A. 6); *N.L.R.B. v. Parkhurst Mfg. Co.*, 317 F. 2d 513 (C.A. 8), enf'g, 136 NLRB 872, 879-880; *N.L.R.B. v. Winona Textile Mills, Inc.*, 160 F. 2d 201, 207-208 (C.A. 8). Moreover, where (as here) such conduct is used in furtherance of an employer effort to procure the favored union's election and the defeat of another union toward which the employer has long been hostile, the employer has also afforded assistance to the favored union, in violation of Section 8(a)(2).<sup>16</sup> *International Association of Machinists v. N.L.R.B.*, 311 U.S. 72, 78, affirming, 71 App. D.C. 175, 110 F. 2d 29. The record evidence amply warranted the Board in finding that the Company promised and made preferential overtime assignments to employees because of their UTE membership, and denied such assignments to seven employees because of their Teamster membership.

As shown on pp. 7-8, *supra*, at the October 2 employee meetings the Company announced that it was cutting out overtime unless absolutely necessary. Nonetheless, a few days later, Foreman Baker announced that UTE members would get all the overtime they wanted. Thus, during the 10-week period prior to the second election, UTE members received an average of over twice as much overtime as Teamster members. Of the 30 Teamster employees, only 4 worked as much as or more than the average overtime worked by the UTE employees, while only 5 of the 49 UTE members worked less overtime than the average for Team-

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<sup>16</sup> Respondent Company had similarly favored UTE over the Teamsters following a prior representation contest. *Red Ball Motor Freight Inc.*, 143 NLRB 125, enf'd by this Court, *per curiam* (*General Drivers, Local 968 v. N.L.R.B.*, Nos. 17956 and 17994, March 3, 1964, 56 LRRM 2480, cert. denied, *sub nom. Red Ball Motor Freight, Inc. v. N.L.R.B.*, 379 U.S. 822).

See also *N.L.R.B. v. Red Arrow Freight Lines, Inc., et al.*, 77 NLRB 859, enf'd., 180 F. 2d 585 (C.A. 5), cert. denied, 340 U.S. 823.

ster members (J.A. 218). When the Teamsters filed a grievance protesting this discriminatory assignment of overtime, the Company not only refused to process the grievance, but took no steps to assure Teamster members that the favorable assignment of overtime to UTE members was justified by legitimate business considerations. Instead, the Company used this disparity to point out to the employees that "the UTE contract is the best labor agreement," urging them to "vote for the UTE contract" so that "your families can enjoy the extra take home pay."

The record shows, moreover, that Teamsters Giddens, Nash, Rachel, Thompson, Gremillion, Lemoine, and Fuller were victims of the Company's announced discriminatory policy. Thus, Giddens was told to clock out at the end of his shift, while UTE members Lofton and Green (who, according to Manager Brandon, did not want to work overtime) remained at work. In fact, on one occasion Giddens was relieved so that UTE member Green could complete the work on overtime. The Company offered no explanation for its discrimination against Giddens. Nor did the Company offer any explanation for the fact that Teamsters Nash, Gremillion, and Lemoine were assigned much less overtime than their UTE counterparts.<sup>17</sup>

Furthermore, the record fails to support Manager Brandon's testimony that Teamsters Fuller, Thompson, and Rachel worked less overtime than their UTE counterparts because these Teamster members did not want to work overtime—Fuller and Rachel allegedly having specially refused overtime immediately after the merger (J.A. 227, 225; 156). Fuller denied that he had refused overtime and, indeed, testified that he had frequently told Brandon that

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<sup>17</sup> The Company's disparate treatment of Trailer Driver Lemoine is particularly suspect in view of District Manager Bailey's testimony that it is harder to limit the overtime of such drivers than of bobtail drivers because the former carried larger loads and—not being equipped with two-way radios like the bobtail trucks—could not be contacted by the Company's dispatcher (J.A. 224, 227, n. 43; 145-146). Yet Lemoine, a trailer driver, only worked from one-half to one-third of the overtime worked by UTE bobtail drivers (J.A. 217).

he wanted more (J.A. 227; 165-166). Similarly, Thompson testified that Brandon had told him and Rachel to go home after completing their regular shifts unless told to remain; and denied having told Brandon that he did not want overtime work, except on a few occasions when he gave Brandon specific reasons for not wanting to work overtime on that particular day (J.A. 225; 164, 94). The employees' testimony is corroborated, and Brandon's refuted, by the Company's payroll records, which show that immediately after the merger, both Rachel and Fuller worked about the same amount of overtime as other Teamster members not claimed to be averse to overtime (J.A. 225, 228 n. 45). Moreover, Brandon's explanation for Thompson's and Rachel's alleged unwillingness to work overtime—namely, that they went home from work in the same automobile and, therefore, wanted to leave at the same time—does not hold water: because most of the overtime work was performed on the dock, no reason appears why their car-pooling arrangement would have interfered with their accepting such work, especially since each UTE member on the same shift worked substantially the same amount of overtime on any given day (J.A. 226, n. 42). These and other inconsistencies in Brandon's testimony<sup>18</sup> amply warranted the Examiner and the Board in rejecting it (J.A. 223, n. 34, 226, 228) and in finding that Fuller, Thompson, and Rachel, like other Teamster members, were denied overtime because of their union affiliation.

The Examiner and the Board were likewise warranted in

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<sup>18</sup> Thus, Brandon testified that two UTE drivers in this group did not want to work overtime; yet they both worked four to five times as much overtime as Rachel and Thompson. (J.A. 225-226; 158-159). (Garrett 15.85; O'Daniel 20.39; Rachel 3.53; Thompson 3.04). Similarly, Brandon testified that UTE members Lofton and Green did not want to work overtime; in fact, they worked nearly four times more than Teamster member Giddens (*supra*, p. 9). In addition, Brandon testified that UTE member Bruce disliked overtime. Nevertheless, despite the fact that Bruce was on vacation during a period in which there was heavy overtime, Bruce's overtime nearly equalled the total amount worked by Teamster members Gremillion, Lemoine and Fuller combined. (J.A. 228, n. 44, 217).



rejecting Brandon's testimony regarding additional alleged reasons why Teamster employee Fuller was denied overtime. Although describing Fuller as "a hard worker" and one who "does a good job" (J.A. 228; 154-155), Brandon testified that Fuller was denied overtime because he had difficulty reading "when he first come over" (J.A. 227; 155). However, as previously noted, Fuller worked as much overtime as other Teamster members not claimed to have a reading difficulty (J.A. 228 n. 45). Moreover, Fuller was assigned work relating to destinations formerly within the territory of the Abbey Street terminal where he had previously worked. As the Board pointed out, the coding system (e.g., "NO" for New Orleans (J.A. 141)), and the fixed location of outgoing trailers, would appear to have made the work more comprehensible to Fuller than at Abbey Street. Furthermore, since Fuller performed the same work on overtime as he did on straight time, it is difficult to conclude that he was competent and useful on the regular shift, but unqualified to perform the same duties on overtime. (J.A. 228). Finally, Fuller's low overtime would seem inconsistent with the Company's expressed policy to assign overtime to employees who are paid at the lowest rates (J.A. 159, 135, 139-140).

In sum, the record as a whole amply supports the Board's finding that these seven employees were denied overtime because they were Teamster rather than UTE adherents, in violation of Section 8(a)(3) and (1) of the Act.

**II. Substantial Evidence on the Whole Record Supports the Board's Finding That the UTE Violated Section 8(b)(1)(A) by Announcing, Prior to the First Representation Election, That It Would Obtain Preferential Seniority for Members of the UTE if It Were Selected as the Employees' Bargaining Agent.**

As related in the Statement, *supra*, pp. 3, 6-7 n. 4, in order to effectuate certain operational economies Red Ball determined that it would consolidate its freight operations then conducted in its two Shreveport terminals. All of its operations in this geographical area would be conducted from

its Airport Drive terminal. (J.A. 196, 199-200; 135, 146-147). Thereafter, Red Ball, the Teamsters, and the UTE met to settle the issues arising from the consolidation, and it was agreed that which union would represent all of the employees in the new unit would be determined by a consent election. The existing contract of the successful union would cover all employees, and that union would negotiate with the employer after certification about collateral bargaining issues arising from the merger.

The employee benefits called for by the Teamsters contract were in certain respects superior to those called for by the UTE contract.<sup>19</sup> However, the major issue which would have to be settled by negotiations if the UTE won the election was the system to be used in determining the employees' seniority—a matter not covered by the UTE contract (J.A. 205 n. 16). Accordingly, the UTE—exploiting the circumstance that its membership whom it had represented at the Airport Terminal before the merger constituted a numerical majority of the employees in the new unit—announced that if it won the election all the UTE employees would be put on a seniority list ahead of all the Teamster employees. The UTE emphasized the inflexibility of its position in a letter to the employees, the

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<sup>19</sup> Thus, as previously noted, the Teamsters' contract called for overtime pay after 8 hours a day, and the UTE contract after 10 hours (*supra*, p. 6). In addition, the Teamsters' contract (unlike the UTE contract) called for overtime pay for work on the sixth day and double time for work on the seventh day (*Ibid.*). Furthermore, an employee is entitled to a 3 week vacation after 11 years of service and 4 weeks after 16 years under the provisions of the Teamsters' contract (Art. 50, §§ 3 & 4, p. 77); while under the UTE contract, 12 years of employment is required for 3 weeks' vacation and no provision is made for a 4-week vacation (Art. 17, § 3, p. 15). Other benefits granted by the Teamsters' contract, which are not provided for by the UTE agreement, include pension and health and welfare funds supported by employer contributions (Art. 48, pp. 73-75; Art. 49, pp. 75-77); employee cost-of-living allowances (Art. 33, p. 46-48); employer payment of moving expenses of employees forced to change residence in order to follow employment (Art. 39, § 7, p. 59) and employer-furnished and maintained uniforms, where required (Art. 12, p. 35).



day before an election won (as might be expected) by the UTE, stating, "Even if seniority is dovetailed, you know a majority of UTE employees will go to the bottom of the board should the Teamsters win. . . . You can rest assured that the Union of Transportation Employees will *never* agree that its members will go to the bottom of any seniority list and that your seniority will be respected and protected against all others" (emphasis in original) (J.A. 180-181). In order to lead the employees into believing that their position on the seniority list would immediately affect their job security,<sup>20</sup> and thus to augment the significance of this announced position, the UTE advised its members—without (so far as the record shows) the slightest reason for it to believe—that about 15 employees would be laid off after the merger.<sup>21</sup> Moreover, this letter was drafted in response to the Teamsters' letter pointing out that whichever union won the election would be under a duty to represent all the unit employees fairly (J.A.191-192).

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<sup>20</sup> The UTE contract, the applicable agreement if the UTE were selected, provided, *inter alia*, as follows: "The rights of seniority shall be recognized . . . with respect to runs or job assignments. and in all cases of reduction of forces and recalls to service. In the case of promotions, fitness and ability being equal, seniority shall prevail." Art. 11 § 4. See also Art. 28 § 1. (J.A. 187). Furthermore, a senior employee has the right to displace a junior employee whenever he loses his job through no fault of his own. *Id.* at Art. 13 § 2(c). (J.A. 185). The Teamsters' contract provides that seniority shall prevail in lay-offs and recalls, and that new positions and permanent vacancies be filled according to seniority where ability and physical fitness are equal. (G.C. Exh. 13, Art. 39. § 2(b), 3(a) and (b), p. 57).

<sup>21</sup> Cf. *International Union of Electrical Workers v. N.L.R.B.*, 110 App. D.C. 91, 101-102, 289 F.2d 757, 767-768, where an employer asserted, without showing any basis for believing this to be true, that two of its biggest customers would not do business with a union company. This Court commented, "Congress did not intend to protect an unqualified assertion of such importance unless the utterer can show that he has some reasonable basis for it \* \* \* The Act does not \* \* \* confer a license to make an assertion of a specific and critical fact which is drawn from thin air."

The Board found that "the action which UTE proposes was in derogation of its obligation of fair representation [see pp. 22-34, *infra*]. The timing and manner of the announcement of the promise, its coupling with the apparently unfounded spectre of impending layoffs, and the fact that UTE adopted a seniority policy before UTE had even become the representative of the Abbey Street employees support the inference that UTE's promise to seek preferential seniority for the UTE employees was based upon its desire to assure continuation of its representative status at the terminal and was not conscientiously adopted in an effort to find a workable solution to an admittedly difficult problem \* \* \* there is no evidence in the record to rebut the inference that UTE proposed to classify unfairly the employees at the merged terminal. \* \* \* the promised action \* \* \* does not reflect the kind of compromise between competing interests which collective bargaining daily requires, but would serve the interests of UTE and the majority of the employees in the unit it sought to represent with hostility to those of the minority" (J.A. 207-209). Accordingly, the Board found, the UTE's promise violated Section 8(b)(1)(A) of the Act. We submit that this finding is amply supported by the record evidence.

*A. The UTE's promised action in respect to seniority was in derogation of the duty of fair representation required of a statutory representative.*

A collective bargaining agent is required to deal fairly and impartially with all members of the unit which it represents. *Steele v. Louisville & Nashville Railroad Co.*, 323 U.S. 192, 203-204; *Syres v. Local 23, Oil Workers*, 350 U.S. 892, reversing *per curiam*, 223 F. 2d 739 (C.A. 5); *Wallace Corp. v. N.L.R.B.*, 323 U.S. 248, 255-256; *IUE, Frigidaire Local 801 v. N.L.R.B.*, 113 App. D.C. 342, 346, 307 F. 2d 679, 683, cert. denied, 371 U.S. 936; *Battle v. Brotherhood of Railway & Steamship Clerks, etc., Lodge 1568*, 116 App. D. C. 20, 23, 320 F. 2d 742, 745 (Burger, J. concurring); *Thompson v. Brotherhood of Sleeping*

*Car Porters*, 316 F. 2d 191, 197-201 (C.A. 4), and cases cited therein. Otherwise, employees who are not members of the favored group are left without adequate representation. *Radio Officers' Union v. N.L.R.B.*, 347 U.S. 17, 47-48. This duty of fair representation, which is "in a sense fiduciary in nature"<sup>22</sup> obligates the bargaining representative to make "an honest effort to serve the interest of all [the employees] without hostility to any" and to demonstrate "complete good faith and honesty of purpose in the exercise of its discretion." *Ford Motor Co. v. Huffman*, 345 U.S. 330, 337.

Nowhere is the representative's "honesty of purpose" more essential than in the resolution of issues created by the merger of two groups of employees, as in this case. Since such mergers almost necessarily entail the modification of preferential seniority rights theretofore enjoyed by the employees in their separate bargaining units, it is most important for the employees' representative to minimize the impact of these changes, and attempt to deal with conflicting interests arising therefrom in a manner equitable to all.<sup>23</sup> In accommodating these conflicting interests, the union must take its position "honestly, in good faith and without hostility or arbitrary discrimination": it must act "upon wholly relevant considerations." *Humphrey v. Moore*, 375 U.S. 335, 350; *Steele, supra*; *Thompson v. New York Central Railroad*, 61 LRRM 2542, 2544, 52 L. C. para. 16,697 (Jan. 28, 1966, D.C. S.D.N.Y.).<sup>24</sup> Thus,

<sup>22</sup> *I.U.E., Frigidaire Local 801, supra*; *Thompson, supra*, at 201; *N.L.R.B. v. Hotel. Motel & Club Employees' Union, Local 568*, 320 F. 2d 254, 258 (C.A. 3); *Hughes Tool Co. v. N.L.R.B.*, 147 F. 2d 69, 74 (C.A. 5).

<sup>23</sup> It is difficult to overestimate the importance of such rights to the individual employee. See, *Humphrey v. Moore*, 375 U.S. 336, 346-347; *Dooley v. Lehigh Valley R. Co.*, 130 N. J. Eq. 75, 21 A. 2d 334, 338-339.

<sup>24</sup> As said in *Whitfield v. United Steel Workers*, 263 F. 2d 546, 547 (C.A. 5), cert. denied, 360 U.S. 902, "The provisions of a collective bargaining agreement must be relevant to the conditions of the particular industry and company to which they are to be applied" (emphasis in original).

"an arbitrary sacrifice of a group of employees' rights in favor of another stronger or more politically favored group" (*Gainey v. Brotherhood of Railway & Steamship Clerks*, 313 F. 2d 318, 324 (C.A. 3)) contravenes a union's duty of fair representation. *Ferro v. Railway Express Co.*, 296 F. 2d 847, 851 (C.A. 2); *Belanger v. Local Division No. 28*, 254 Wis. 344, 36 N.W. 2d 414, 419; *Trailmobile v. Whirls*, 331 U.S. 40, 69 (Jackson and Frankfurter, JJ., dissenting); see also, *Brotherhood of Railroad Trainmen v. Howard*, 343 U.S. 768; *In re City of Green Bay, Wisconsin*, 44 L.A. 311, 316; *O'Donnell v. Pabst Brewing Co.*, 12 Wis. 2d 491, 107 N.W. 2d 484, 489; *In re Associated Brewing Co.*, 40 L.A. 680, 686.<sup>25</sup>

If selected by an employee majority as the exclusive bargaining representative of all, the UTE could hardly discharge its delicate and difficult duty of effecting a fair compromise between the conflicting interests of all unit employees without receiving and considering arguments advanced on behalf of all the competing factions, including

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<sup>25</sup> Professor Mark L. Kahn, in discussing seniority problems in transportation mergers, concluded that the equities of minority groups of employees "are most likely to be overridden when members of a numerically dominant group find in a merger an opportunity to gain in seniority status at the expense of the merged minority. The likelihood of reasonable solutions is further diminished when rival unions are involved. . . ." Kahn, *Seniority Problems in Business Mergers*, 8 *Industrial and Labor Relations Review* 361, 378 (1955). However, notwithstanding these practical problems, the representative must show "some practical justification beyond the desire of the majority to share job opportunities theretofore enjoyed by a smaller group." Archibald Cox, *The Duty of Fair Representation*, 2 *Villanova Law Review* 151, 164 (1957). Professor Alfred W. Blumrosen would require the union, whenever it abridges seniority rights, to demonstrate "not only that it exercised an honest judgment but also that it made an appropriate decision, one based on objective factors, which would persuade a rational decision-maker, and not compelled by the internal political make-up of the union." Alfred W. Blumrosen, *The Worker and Three Phases of Unionism: Administrative and Judicial Control of the Worker-Union Relationship*, 61 *Mich. L. Rev.* 1435, 1482 (1963).

the former Abbey employees.<sup>26</sup> Moreover, these employees could have advanced substantial considerations which pointed to affording them more than the wholly subordinate seniority position which, the UTE unconditionally announced, was to be their lot. Thus, the Abbey employees might well have been able to persuade a fair-minded representative that their transfer from the Abbey to the Airport terminal should not impose on them virtually the full burden of any reduction in force which might be necessary throughout all those parts of the Red Ball system represented by UTE,<sup>27</sup> particularly because the Abbey work which they had previously performed had not been lost by Red Ball but, instead, had been transferred with them and would thus be made available to the other employees in the system under the UTE's system-wide seniority schedule. A scrupulously fair bargaining representative might well conclude, after giving due consideration to the Abbey employees' claims, that this group should be entitled to some, if not full, credit for their long years of service at the work eventually transferred to the Airport terminal. Conscientious unions, employers, and arbitrators ordinarily develop solutions to such problems after giving weight to such factors—which UTE wholly excluded from consideration—as the employees' years of service on the job,<sup>28</sup> the extent to which their old jobs con-

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<sup>26</sup> Cf., *Office of Communication of United Church of Christ v. Federal Communications Commission*, App. D.C. , 359 F.2d 994. See also, the cases cited on p. 29, *infra*.

<sup>27</sup> UTE used a single seniority roster for all the parts of the Red Ball system which it represented (J.A. 122-123, 117, 120, GCX 14, Art. 11 § 1 pp. 9-10). Accordingly, subordinating the Abbey Street employees' seniority to that of the UTE group would necessarily subordinate the former employees' seniority to that of virtually all of the employees represented by the UTE at other terminals.

<sup>28</sup> This factor—which the Teamsters proposed as a basis for solving the seniority problem (J.A. 204; 190-192)—has been afforded conclusive weight in some situations. See, e.g., *Humphrey v. Moore*, 375 U.S. 335 ("a familiar and frequently equitable solution"); *O'Donnell v. Pabst Brewing Co.*, 12 Wis.2d 491, 107 N.W.2d 484; *In re Associated Brewing Co.*, 40 L.A. 680, 684-686; *Pratt v. Wilson*



tributed to the pool now available to the employees in the new unit, and various combinations of these and other factors.<sup>29</sup> See generally, Dan H. Mater and Garth L. Mangum, *The Integration of Seniority Lists in Transportation Mergers*, 16 *Industrial and Labor Relations Review* 343 (1963); Mark L. Kahn, *Seniority Problems in Business Mergers*, 8 *Industrial and Labor Relations Review* 361 (1955); *In re City of Green Bay, Wisconsin*, 44 L.A. 311, 314-316; Alfred W. Blumrosen, *Union-Management Agreements Which Harm Others*, 10 *Journal of Public Law* 345, 368-372 (1961); Bureau of National Affairs, *Collective Bargaining Negotiations and Contracts*, 75: 201 (1964); Note, 34 *George Washington L. Rev.* 797, 801 (1966). The UTE's announcement that if it won the forthcoming election, all the old UTE unit employees would be senior to all those in the old Teamsters unit, demonstrated that it had

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*Trucking Co.*, 214 Ga. 385, 104 S.E. 2d 915; *Kent v. Civil Aeronautics Board*, 204 F. 2d 263 (C.A. 2), cert. denied, 346 U.S. 826.

Before the Board, Red Ball sought to justify the UTE's seniority announcement by suggesting that the Teamsters' September 4 letter (J.A. 190-192) amounted to a declaration that it too would disregard the duty of fair representation. However, the Teamsters' letter expressly recognized and accepted this duty, suggested the "dovetailing" solution approved in the foregoing cases, and made no assertion that it would not consider any other alternatives. In any event, unfair labor practices by the Teamsters would not justify unfair labor practices by the UTE. See, *N.L.R.B. v. Plumbers Union*, 299 F. 2d 497, 501 (C.A. 2).

<sup>29</sup> See, e.g., *In re Moore Business Forms, Inc.*, 24 L.A. 793, 799-802; *In re Pan American World Airways, Inc.*, 19 L.A. 14; *In re Armco Steel Corp.*, 36 L.A. 981, 988-990; *N.L.R.B. v. Wheland Co.*, 271 F. 2d 122, 124-125 (C.A. 6); *Hardcastle v. Western Greyhound Lines*, 303 F. 2d 182 (C.A. 9); *Walker v. Pennsylvania-Reading Seashore Lines*, 142 N.J. Eq. 588, 61 A. 2d 453, 458-460; *Colbert v. Brotherhood of Railroad Trainmen*, 206 F. 2d 9 (C.A. 9), cert. denied, 346 U.S. 931; *In re Sonotone Corp.*, 42 L.A. 359, 363-364; *In re Superior Products Co.*, 42 L.A. 517, 524-525; *Grand Lodge of the Brotherhood of Railway and Steamship Clerks v. Girard Lodge No. 100*, 384 Pa. 248, 120 A. 2d 523, 524-526; *Holman v. Industrial Stamping & Mfg. Co.*, 344 Mich. 235, 74 N.W. 2d 322, 328-329. Cf. *Philadelphia Typographical Union, Local No. 2 (Philadelphia Inquirer)*, 142 NLRB 32, 42-43.

the former Abbey employees.<sup>26</sup> Moreover, these employees could have advanced substantial considerations which pointed to affording them more than the wholly subordinate seniority position which, the UTE unconditionally announced, was to be their lot. Thus, the Abbey employees might well have been able to persuade a fair-minded representative that their transfer from the Abbey to the Airport terminal should not impose on them virtually the full burden of any reduction in force which might be necessary throughout all those parts of the Red Ball system represented by UTE,<sup>27</sup> particularly because the Abbey work which they had previously performed had not been lost by Red Ball but, instead, had been transferred with them and would thus be made available to the other employees in the system under the UTE's system-wide seniority schedule. A scrupulously fair bargaining representative might well conclude, after giving due consideration to the Abbey employees' claims, that this group should be entitled to some, if not full, credit for their long years of service at the work eventually transferred to the Airport terminal. Conscientious unions, employers, and arbitrators ordinarily develop solutions to such problems after giving weight to such factors—which UTE wholly excluded from consideration—as the employees' years of service on the job,<sup>28</sup> the extent to which their old jobs con-

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closed its mind in advance to even the most reasonable and just claims of the former Abbey employees.

Moreover, as the Examiner pointed out (J.A. 208-209), there is nothing in the evidence of the circumstances surrounding the merger to suggest a reasonable basis for this classification. The duties and classifications of all the employees at the two terminals were for all practical purposes the same, and after the merger all the employees had to undergo a two-week training period to familiarize themselves with the new operation (pp. 6-7, *supra*). Nor is there any indication either that the future employment prospects of the two groups would have been materially different but for the merger, or that the business formerly conducted at the Abbey Street terminal was likely to be abated by the prospective merger. Indeed, with the consolidation of terminals, the combined operation became the "hub" of the entire Red Ball system (J.A. 132); and the territory previously served by both terminals gave rise to a steadily increasing amount of freight (J.A. 208; 140, 98-99). Nonetheless, the UTE unconditionally proclaimed that of all the many possible alternative solutions for the seniority problem, it would consider only the relegation of the old Teamster employees to the very bottom of the seniority list—a total deprivation of preferential-seniority rights which has frequently been condemned by impartial parties as inherently unfair absent special considerations (such as a substantial pre-merger loss of business by one operation) not present here<sup>30</sup> The statute compels a union

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<sup>30</sup> See, *In re City of Green Bay, Wisconsin*, 44 L.A. 311, 315; *In re Sonotone Corp.*, 42 L.A. 359, 362-363 ("a selfish, exclusory solution \* \* \* a corrosive irritant for years to come \* \* \* might conceivably return to plague them in the future \* \* \* a victory of one side over the other"); *In re Superior Products Co.*, 42 L.A. 517, 524 ("gross injustice"); *In re Armco Steel Corp.*, 36 L.A. 981, 987 ("unseemly and iniquitable"); *In re Associated Brewing Co.*, 40 L.A. 680, 686 ("an unfair deprivation of the reasonable expectations of the former E & B employees not only under the applicable collective bargaining agreement but also in terms of the basic equities at stake"); Alfred W. Blumrosen, *Union-Management Agreements Which Harm Others*, 10 Journal of Public Law 345, 371 (1961)

and an employer, who are required to negotiate at arm's length,<sup>31</sup> to display "a common willingness \* \* \* to discuss freely and fully their respective claims and, when they are opposed, justify them on reason." *N.L.R.B. v. Kentucky Utilities Co.*, 182 F. 2d 810, 813 (C.A. 6). This duty is not satisfied by maintaining a "take it or leave it" position (*N.L.R.B. v. Insurance Agents' International Union*, 361 U.S. 477, 485) or by "merely meeting to inform [the other] that [it] cannot or will not change its position" (*N.L.R.B. v. Israel Putnam Mills, Inc.*, 197 F. 2d 116, 117 (C.A. 2)). The UTE was under a duty to maintain at least an equally receptive attitude with respect to the claims of the employees toward whom it might owe a fiduciary duty arising from its selection by an employee majority as the exclusive bargaining representative of all. This

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(preferred group "are attempting to seize for themselves job opportunities which may be attributable to the other [operation] and to place the entire risk of loss of seniority through merger on the employees of the merged firm"); *Commercial Telegraphers' Union v. Western Union Telegraph Co.*, 53 F. Supp. 90, 96 (D.C.) (hardship imposed by denying absolute preference "would seem incomparable to that which complete destruction of their seniority rights would visit" upon completely subordinated group); Harry H. Wellington, *Union Democracy and Fair Representation: Federal Responsibility in a Federal System*, 67 Yale L.J. 1327, 1360-1361 (1958) ("Although position on the seniority ladder is subject to revision, bargaining for its total limitation seems clearly outside the expectation of the employee community. Some form of dovetailing would accordingly be required"); *In re Pan American World Airways, Inc.*, 19 L.A. 14, 20; *O'Donnell v. Pabst Brewing Co.*, 12 Wis. 2d 491, 107 N.W. 2d 484, 488. See also, *Hargrove v. Brotherhood of Locomotive Engineers*, 116 F. Supp. 3 (D.C.); *Brotherhood of Railroad Trainmen v. Luckie*, 286 S.W. 2d 712 (Tex. Ct. Civ. App.); *Mount v. International Brotherhood of Locomotive Engineers*, 226 F. 2d 604, 607 (C.A. 6).

<sup>31</sup> See, *American Enka Corp. v. N.L.R.B.*, 119 F. 2d 60, 62-63 (C.A. 4) ("Collective bargaining becomes a delusion and a snare if the employer, either directly or indirectly, is allowed to sit on both sides of the bargaining table"); *Local 636 of United Association of Journeymen and Apprentices of Plumbing and Pipe Fitting Industry v. N.L.R.B.*, 109 App. D.C. 315, 287 F. 2d 354.

duty toward the minority it expressly abjured in order to obtain the votes of the majority.

B. *The UTE's announcement, during the pre-election campaign, that it would secure seniority for the Airport group over the Abbey group, violated Section 8(b)(1)(A) of the Act.*

As we have shown above, during the pre-election campaign the UTE sought to procure the support of the dominant Airport group by holding out the inducement (necessarily constituting a threat to the former Abbey terminal employees) that all of the Airport group would have seniority rights over the Abbey group. During a representation campaign, a union is, of course, free to disclose to the employees the substantive bargaining proposals which it proposes to urge should it prevail in the election. However, where a union goes further and in effect promises one group of employees an economic advantage over another group in order to get the former to select it as a representative, it violates Section 8(b)(1)(A) of the Act. For such a promise, no less than an outright bribe, would tend to restrain or coerce the employees to whom the promise was made in the exercise of their Section 7 right to make a free choice respecting a bargaining agent. Cf. *N.L.R.B. v. Gorbea*, 300 F.2d 886, 328 F.2d 679 (C.A. 1); *N.L.R.B. v. Gilmore Industries*, 341 F.2d 240 (C.A. 6). Such a promise of economic benefits can be as disruptive of free choice as a threat to deprive a group of employees of employment rights if they fail to support the union and it later becomes the representative.<sup>32</sup>

The action of the UTE also violated Section 8(b)(1)(A) in that the promise to prefer the Airport employees for

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<sup>32</sup> *A. O. Smith Corporation v. N.L.R.B.*, 343 F.2d 103, 108, 115 (C.A. 7); *Local 511, St. Louis Offset Printing Union*, 130 NLRB 324, 326-327; *N.L.R.B. v. Local 138, Int'l. Union of Operating Engineers*, 321 F.2d 130, 136 (C.A. 2).

seniority purposes simply because they had voted for UTE threatened to deprive the Abbey employees of their right to be fairly represented by UTE should it become the representative. This theory, which involves the Board's *Miranda* doctrine,<sup>33</sup> rests on the premise that the duty of fair representation imposed by Section 9 of the Act is also embodied in Section 7. We proceed to demonstrate the validity of this premise:

Section 9 of the Act confers upon a majority union the privilege of acting as an exclusive bargaining representative for employees; see the cases cited on pp. 23-24, *supra*. This statutory privilege carries with it the duty and obligation to act fairly and impartially on behalf of all those it represents. This obligation is also embodied in Section 7, for its guarantee to employees of the right "to bargain collectively through representatives of their own choosing" necessarily encompasses the employees' right to have their chosen collective bargaining representative fulfill its duty to act as a representative in a fair and impartial manner. To the extent that the representative fulfills its responsibility to its constituency as a whole, each employee receives the full measure of his guaranteed right to bargain collectively through a representative of his choosing. On the other hand, if a union for an arbitrary or irrelevant reason refuses to act on the employee's behalf or acts in such a manner as to discriminate against him, the union has not only breached its obligation to represent this employee fairly and impartially, but to the extent of its

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<sup>33</sup> *Miranda Fuel Co., Inc.*, 140 NLRB 181, set aside, 326 F.2d 172 (C.A. 2) (see pp. 31-33, *infra*); *Independent Metal Workers Union, Local 1 (Hughes Tool Co.)*, 147 NLRB 1573; *Local 1367, International Longshoremen's Association (Galveston Maritime Association)*, 148 NLRB 897 (now pending before the Fifth Circuit, Docket No. 22034); *Local Union No. 12, United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO (Business League of Gadsden)* 150 NLRB 312 (now pending before the Fifth Circuit, Docket No. 22239); *Cargo Handlers, Inc.*, 159 NLRB No. 17, 62 LRRM 1228.



arbitrary action, it has diminished this employee's guaranteed Section 7 right to be represented fairly and impartially by the chosen agent.

Moreover, an employer is obligated to bargain with a duly chosen bargaining representative and, concomitantly, would restrain the employees in the exercise of their right under Section 7 to be bargained for by a representative of their own choosing if he refused to permit that representative to act for all employees. Manifestly, the Section 7 right of all employees—including those who voted against the union—to be bargained for by their statutory representative must be equally enforceable against the union, for it would be incongruous to require the employer to bargain with respect to all employees yet permit the union to ignore its obligations under Section 7 and 9 to represent all employees. And as we have shown, the right of each employee to have the statutory representative bargain for him must of necessity include the right to have that representative bargain for all employees in a manner that does not treat any employee or group of employees unfairly or invidiously. For unfair representation is in essence no representation at all. In short, the duty of a union to represent all employees, when acting as their exclusive bargaining representative, requires that the representation be "fair" in order to give the duty and the employees' Section 7 rights meaningful vitality.<sup>34</sup>

Finally, Section 7 guarantees, in addition to the right of employees to bargain through representatives of their own choosing, the right "to refrain from any or all of such activities." When an employer and a union—the latter being the duly selected bargaining representative under Section 9—bargain with respect to all employees, they are at the same

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<sup>34</sup> The Board has in earlier cases indicated that it would rescind the certification of a union shown to have represented unfairly. *Larus and Brother Co.*, 62 NLRB 1075; *Hughes Tool Co.*, 104 NLRB 318; *Pittsburgh Plate Glass Co.*, 111 NLRB 1210; *A. O. Smith*, 119 NLRB 621; *Independent Metal Workers Union, Local 1 (Hughes Tool Co.)*, 147 NLRB 1573. Cf. *New Deal Cab Co., Inc.*, 159 NLRB No. 111.



time placing a limitation upon the ostensible rights of the minority who do not want the union to bargain for them. To this extent, Section 9, of course, privileges conduct that would otherwise be an unfair labor practice. The dissenting employees thus lose their Section 7 right to refrain from bargaining collectively when an exclusive bargaining representative has been chosen. Having lost this right, however, the interplay of Sections 7 and 9 must mean that all employees have the right to be bargained for on an equal basis. The nonconsenting minority loses the right to refrain, but has substituted for that lost right the right to fair and equal representation. Only by this approach—by reading into portions of Section 7 the representation concepts of Section 9—can the rights guaranteed in Section 7 be made intelligible.

Accordingly, if the UTE carried out its threat to breach its duty of fair dealing, it would actually deprive the employees of their Section 7 right to the impartial and fair services of a bargaining representative, thereby violating Section 8(b)(1)(A) of the Act (forbidding a union to restrain or coerce employees in the exercise of their Section 7 rights).<sup>35</sup> Cf. *International Ladies' Garment Workers' Union v. N.L.R.B.*, 366 U.S. 731, 737-739. The threat to

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<sup>35</sup> Cf. *International Union of Electrical, Radio and Machine Workers, AFL-CIO, Frigidaire Local 801 v. N.L.R.B.*, 113 App. D.C. 342, 346-347, 307 F.2d 679, 683-684, cert. denied, 371 U.S. 936 ("A union may not treat as adversaries either its members or those potential members whose continued employment is dependent upon union membership. \* \* \* The Union is bound by law to represent all employees in the bargaining unit. \* \* \* The Union's assertion of improper tender [of dues and fees] must be viewed by the Board and the court in the context provided by the statutory concept of fair play. \* \* \* Out-of-hand rejection of the money order, without a word of explanation, amounts in our view to an arbitrary failure on the Union's part to meet its obligations and peculiar responsibilities under the Act"—citing *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338). See also *N.L.R.B. v. Die & Tool Makers Lodge 113*, 231 F.2d 298, 302 (C.A. 7), cert. denied, 352 U.S. 833; *Confectionery & Tobacco Drivers v. N.L.R.B.*, 312 F.2d 108, 114-115 (C.A. 2).

commit this unfair labor practice is no less a violation of Section 8(b)(1)(A).<sup>36</sup>

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<sup>36</sup> Other contexts in which the union's breach of the duty of fair representation may give rise to a union or employer unfair labor practice are illustrated in the cases cited on p. 31, n. 33, *supra*.

The sole case in which a court has considered the Board's *rationale* that the union violates Section 8(b)(1)(A) by breach of its duty of fair representation, is *N.L.R.B. v. Miranda Fuel Co., Inc.*, 326 F.2d 172 (C.A. 2). In that case the Board had found that the union violated both Section 8(b)(1)(A) and (2) of the Act by causing the employer to reduce the seniority of an employee for no apparent good reason, and not, as insisted by the union, pursuant to a contract provision which provided for reduction in seniority. The Board also found that the employer violated Section 8(a)(1) and (3) by acceding to this demand. 140 NLRB 181. A single member of the court (Judge Medina) expressed disagreement with the Board's theory that the duty of fair representation implicit in Section 9 of the Act was incorporated in Sections 7 and 8, and accordingly rejected the Board's conclusion that a breach of that duty was violative of Section 8(b)(1)(A) and 8(b)(2). The concurring opinion (by Chief Judge Lumbard) agreed that the union had not violated Section 8(b)(2) and, viewing the union's action not to be violative of its duty of fair representation, saw no reason to consider whether a breach of that duty was a violation of Section 8(b)(1)(A). The dissenting opinion (by Judge Friendly), on the other hand, concluded that the union's conduct violated Section 8(b)(2) and, therefore, did not consider the Board's finding with respect to the Section 8(b)(1)(A) violation.

Although the Supreme Court has noted that there is a difference of opinion as to whether a breach of the duty of fair representation is an unfair labor practice, it has not passed on the question. See, *Humphrey v. Moore*, 375 U.S. 335, 344; *Republic Steel v. Maddox*, 379 U.S. 650, 652; *Syres v. Oil Workers International Union*, 350 U.S. 892, reversing 223 F.2d 739 (C.A. 5); *Plumbers' Union v. Borden*, 373 U.S. 690, 696, n. 7; *Ford Motor Co. v. Huffman*, 345 U.S. 330, 332, n. 4. Note Justice Goldberg's remarks in his concurring opinion in *Humphrey v. Moore*, *supra*, at p. 351: "It is my view rather that Moore's claim must be treated as an individual employee's action for a union's breach of its duty of fair representation—a duty derived not from the collective bargaining contract but from the National Labor Relations Act, as amended \* \* \*." [Citations omitted].

### III. The Union's Contentions in No. 20,077 Are Without Merit

A. *The Board did not err in finding that the Company did not discriminatorily deny overtime to other IBT members.*

Although UTE members worked more overtime than Teamster members, the Board was warranted in finding that the record fails preponderantly to establish that Red Ball discriminatorily denied overtime work to Teamster members, other than the seven individuals discussed *supra* pp. 9-11, 18-20, because of their union affiliation (J.A. 231-232). An overall comparison of overtime records cannot form a valid basis for concluding that the Company discriminated against every individual Teamster member, because of the staggered working hours, fluctuations in the volume of work, and differences in duties and rates of pay of the various Red Ball employees. Thus, since UTE members, under their contract, worked a 10-hour day before penalty rates applied, their regular shifts were two hours longer than those of the Teamster members.<sup>37</sup> Therefore, unless UTE members commenced work two hours prior to Teamsters members, they would remain at work after Teamsters had completed their regular shifts and quit work for the day. An unexpected arrival of incoming freight might well require employees then on duty to remain at work and be paid at a premium rate. The Teamsters, who had already left the terminal, would thus be unavailable to share in these overtime assignments (J.A. 221-137-138).<sup>38</sup>

<sup>37</sup> The General Counsel did not contend that it was an unfair labor practice for Red Ball to work IBT members 8 hours and UTE members 10 hours per day straight time as provided in their respective contracts (J.A. 219-220, n. 26).

<sup>38</sup> Teamsters Turner and Kennedy were the only employees with a quitting time of 10.50 and 23.50, respectively (J.A. 232, 234, 214, 218). Similarly, the only employees who shared a common quitting time of 17.00 were Teamster members Stewart, Lasyone and O. Debose (J.A. 233, 216). While Teamster Daniel shared a common scheduled quitting time of 12.50 with nine UTE members, only one,

Moreover, since it was the Company's policy to utilize the lowest-paid man for overtime work, the Board justifiably declined to compare Teamsters and UTE members of different rate classifications where the UTE member is paid at a lower rate than his Teamster counterpart (J.A. 135, 157).<sup>39</sup> It was likewise reasonable for the Board to make no comparison between employees who had a common quitting time, but different duties.<sup>40</sup> When these other bases for different overtime assignments are taken into account, the Board was warranted in finding that the evidence did not preponderantly establish unlawful discrimination against these other Teamster employees.<sup>41</sup>

Clanton, was paid as much and had the same duties as Daniel. Moreover, an analysis of Clanton's time cards reveals that Clanton frequently deviated from his scheduled hours in his actual starting and quitting times (J.A. 232-233, 215).

<sup>39</sup> Teamster checkers Martin, Santone and Smiley, all of whom had a quitting time of 14.50, were paid at the rate of \$3.14 per hour; whereas the UTE checkers with the same quitting time, Rushton and Davis, were paid \$3.00 and \$2.70, respectively (J.A. 233, 215).

<sup>40</sup> Teamsters Salley, Ainsworth, Brown (checkers) and D. Debose (dockman), all of whom regularly quit at 11.50, had different duties than UTE members Litton (hostler) and Giles (checker and bill spotter) with the same quitting time (J.A. 232, 214). Employee Daniel, a driver (trailer-local run), and the only Teamster who quit at 12.50, had different duties than all other UTE members with the same scheduled quitting time, with the exception of Clanton, who, as indicated above, note 38, frequently deviated from his scheduled hours (J.A. 232-233, 215). Finally, of the three employees who quit at 13.50, Teamster member Burks was a checker, and Teamster member Plunkett a driver (trailer); while UTE member Shepard was a hostler (J.A. 233, 215).

<sup>41</sup> Teamster drivers Land (quitting time 15.50), Cryer and Dean (17.50), and Pilcher (21.50) all worked overtime comparable to or greater than UTE drivers with the same quitting time (J.A. 233-234, 215-216).

As to the remaining Teamster members (Hicks, May and Creamer), whose duties, hours and rates of pay were similar to those of UTE members, the Board found that they were either unavailable for or refused overtime, *supra*, pp. 10 n. 7-8, 11-12 n. 11.

B. *The Board's order is valid and proper*

The Teamsters contend that the Board's remedy is insufficient to effectuate the purposes of the Act. The Teamsters urge, *inter alia*, that the Board abused its discretion by failing to order Red Ball to cease recognizing the UTE as the collective bargaining representative of any of its employees and to disestablish the UTE.<sup>42</sup>

It was not alleged in the complaint, nor was it found by the Board, that the UTE was dominated by Red Ball. The remedy of disestablishment which the Teamsters request this Court to direct "has been applied by the Board and upheld by the courts only in the case of a dominated union, where a free choice of a truly representative union is improbable under any circumstances. . . ." *N.L.R.B. v. District 50, United Mine Workers of America (Bowman Transportation, Inc.)*, 355 U.S. 453, 460. Thus, "the Board has always distinguished the remedy appropriate in the case of a union *dominated* by an employer from the remedy appropriate in the case of a union *assisted but undomi-*

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Nor did the Board commit reversible error in dismissing the complaint as to Teamster Darrett (J.A. 234). Darrett and his ordinarily comparable UTE counterpart (Lary Giddens) did not work the same schedule for the 4 weeks prior to the election; Darrett's availability for overtime work was diminished because of a 2½-week vacation before the election (J.A. 234); and the uncontradicted testimony shows that Darrett (a trailer driver) was not reliable as a dock worker because he made frequent mistakes in loading (J.A. 234; 157-158).

<sup>42</sup> The Teamsters also urge that the Company be required to reimburse Teamster employees not only as to overtime but also for differences in straight time hours. However, the General Counsel did not contend, and the Board did not find, that it was an unfair labor practice for Red Ball to work UTE members 10 hours a day at straight time, and Teamsters 8 hours, as was provided by their respective contracts, (J.A. 219-220 n. 26). Accordingly, the Board did not err by failing to issue an order which might have been appropriate to remedy such a violation, if found. See, *Houriha v. N.L.R.B.*, 91 App. D.C. 316, 317, 201 F. 2d 187, 188, cert. denied, 345 U.S. 930; *International Union of Electrical Workers v. N.L.R.B.*, 110 App. D.C. 91, 95-96, 289 F.2d 757, 761-762.



nated by an employer." *Id.* at 458. "[T]he free choice of an assisted but undominated union, capable of acting as . . . [the] true representative [of the employees], is a reasonable possibility after the effects of the employer's unfair labor practices have been dissipated." *Id.* at 459.

While frequently the Board seeks to assure a free employee choice of representatives by directing the employer to withhold recognition until an assisted union receives Board certification, in the circumstances of this case the Board could reasonably anticipate that the order which it issued—directing the employer to cease assisting the UTE by its method of assigning overtime, and infringing on its employees' organizational rights in any like or related manner—would accomplish the same desired result. When the Regional Director has determined that the effects of the employer's unlawful assistance have been dissipated, a new election, as already agreed upon by the parties, will be directed. Nor is there any showing that the continued application of the terms of the UTE contract to UTE members in any way unlawfully favors UTE members over Teamster employees, for the employer has at the same time continued to apply the Teamster contract to Teamster members. We note, moreover, as pointed out on p. 21, n. 19 *supra*, that the Teamsters contract is in some respects more favorable to the employees than is the UTE contract. UTE has been the collective bargaining agent of the Airport employees for a number of years; there was no showing that the UTE contract "was not the product of a free union or free employer." *N.L.R.B. v. Mark J. Gerry, Inc., d/b/a Dove Manufacturing Company*, 355 F. 2d 727, 730 n. 2 (C.A. 9). See also, *N.L.R.B. v. Kiekhoefer Corp.*, 292 F. 2d 130, 135-137 (C.A. 7); *N.L.R.B. v. Scullin Steel Co.*, 161 F. 2d 143, 146-148 (C.A. 8); *Consolidated Edison Co. v. N.L.R.B.*, 305 U.S. 197, 236-237.

Finally, it is well settled that "the relation of remedy to policy is peculiarly a matter of administrative competence" (*Phelps-Dodge Corp. v. N.L.R.B.*, 313 U.S. 177, 194) and the Board, accordingly, is allowed a wide discretion in choosing an appropriate remedy. *N.L.R.B. v. Seven-Up*



*Bottling Co.*, 344 U.S. 344, 346; *Int'l Brotherhood of Operative Potters v. N.L.R.B.*, 116 App. D.C. 35, 38-39, 320 F. 2d 757, 760-761; *East Bay Union of Machinists, Local 1304 v. N.L.R.B.*, 116 App. D.C. 198, 202, 322 F. 2d 411, 415, *aff'd* (*Fibreboard Corp. v. N.L.R.B.*), 379 U.S. 203. Hence, the question here is not whether, in the Court's view, some other form of remedy might be preferable; the only question here is whether the Board's order bears an appropriate relation to the policies of the Act. *Seven-Up, supra*, 344 U.S. at 348. Absent some showing that the instant choice of remedies cannot here operate to effectuate the purpose of the Act, the Board's order must stand. We submit that there is nothing on this record to show that the Board's order will fail to achieve its remedial objects unless further provisions, like those sought by the Teamsters, are also included herein.<sup>43</sup>

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<sup>43</sup> The Teamsters also contend that the Board abused its discretion by failing to require the UTE to mail notices to all employees. The Board's order requires the UTE to post the appropriate notice at its offices, and, in addition, to post it in conspicuous places including all places where notices to its members are customarily posted (J.A. 242). Contrary to the Teamsters' contention, there is every reason to believe that this notice will come to the attention of Teamster members, since the UTE contract permits the UTE to maintain a bulletin board on the employer's premises (Art. 21, p. 17).

**CONCLUSION**

For the foregoing reasons, we respectfully submit that a decree should issue denying Local 568's petition for review in No. 20,077 and granting enforcement of the Board's order in No. 20, 131.

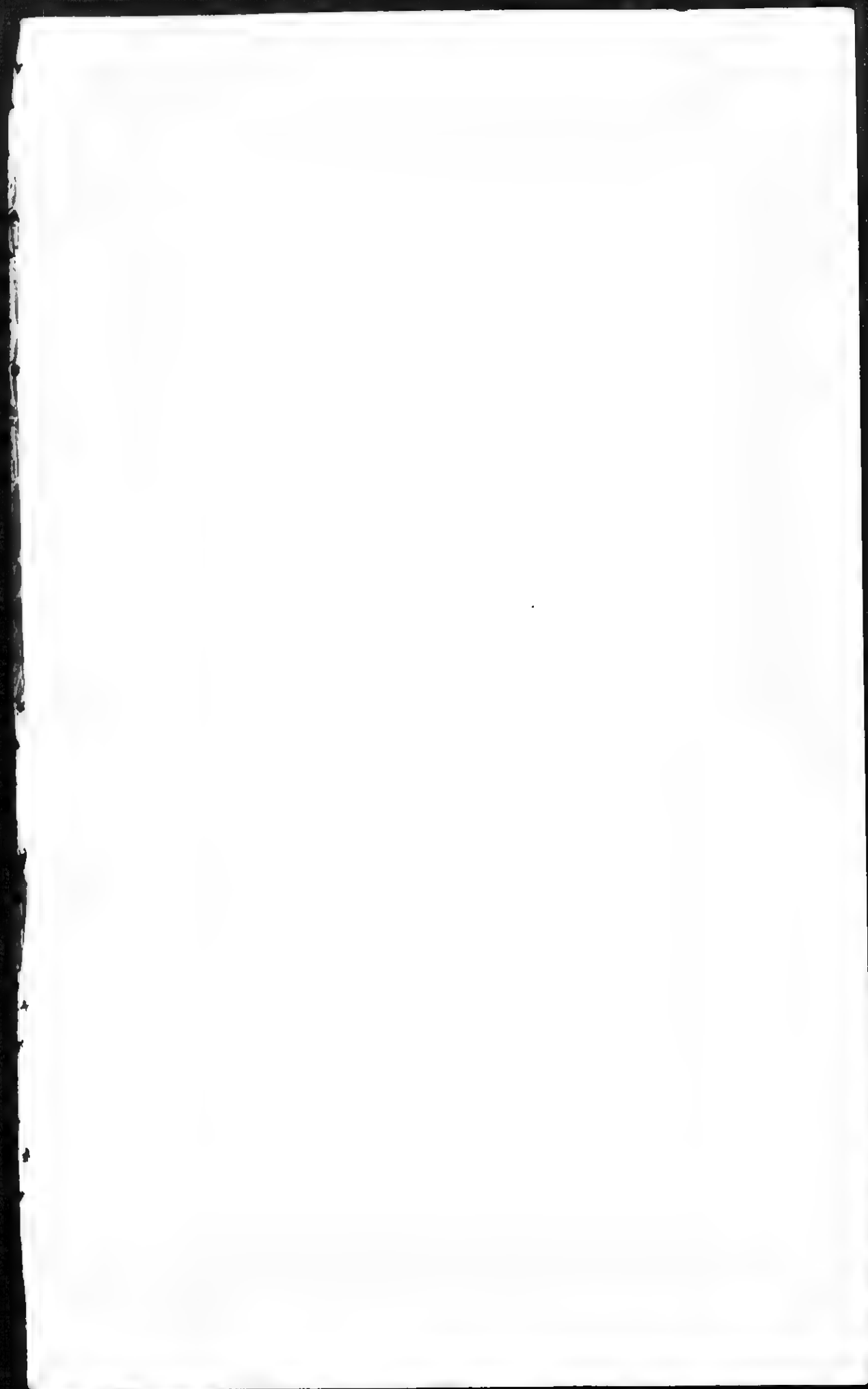
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July 1966



BRIEF FOR RESPONDENT  
UNION OF TRANSPORTATION EMPLOYEES

**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,077

TRUCK DRIVERS AND HELPERS, LOCAL UNION 568, affiliated with  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN, AND HELPERS OF AMERICA,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 20,131

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

and

TRUCK DRIVERS AND HELPERS, LOCAL UNION 568, affiliated with  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN, AND HELPERS OF AMERICA,

Intervenor,

v.

RED BALL MOTOR FREIGHT, INC., and UNION OF TRANSPORTATION  
EMPLOYEES

Respondents.

On Petition to Review, and on Petition to Enforce  
an Order of the National Labor Relations Board

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for the District of Columbia Circuit

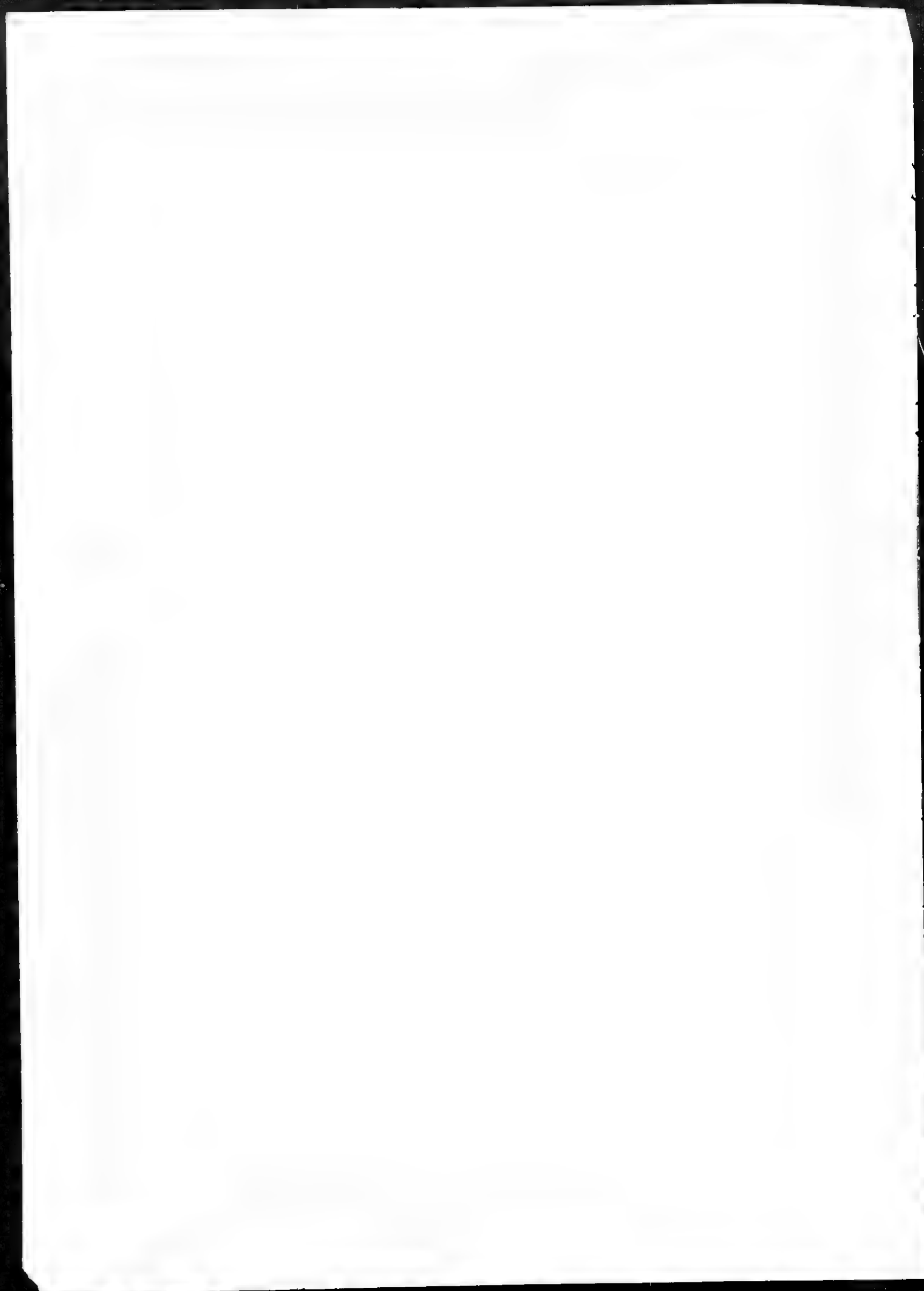
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## STATEMENT OF QUESTIONS PRESENTED

The questions presented, as formulated in the prehearing conference stipulation, are set forth at pp. 1-2 of the Joint Appendix.

A. The issues in Case No. 20,077 are as follows:

1. Whether the Board properly found that the Company did not discriminate against certain employees in the assignment of overtime in violation of Section 8(a)(1) and (3) of the Act.

2. Whether the relief granted by the Board was sufficient to effectuate the purposes of the Act.

B. The issues in Case No. 20,131 are as follows:

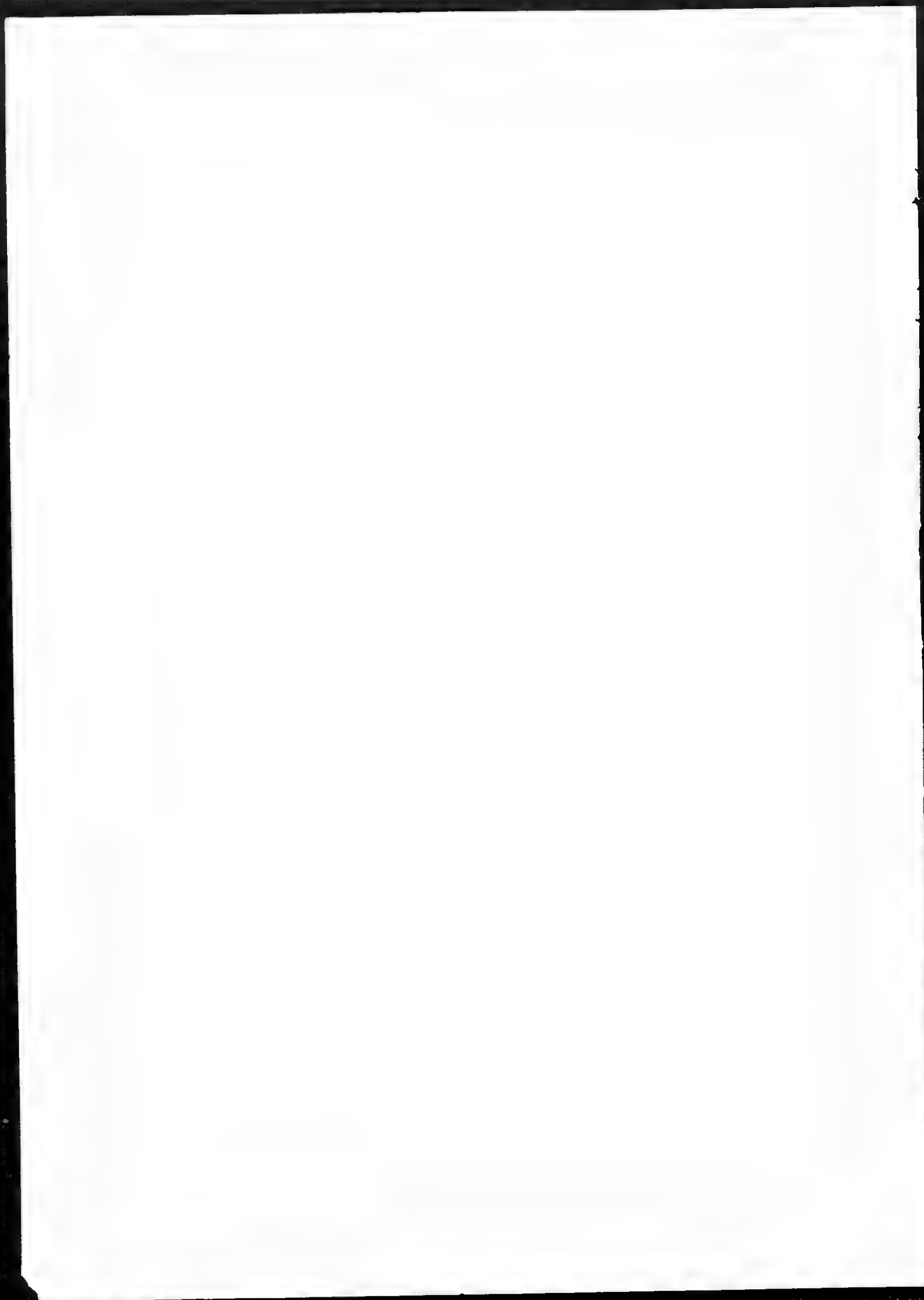
1. Whether substantial evidence on the whole record supports the Board's finding that the Company discriminated against certain employees in regard to the assignment of overtime, in violation of Section 8(a)(1) and (3) of the Act.

2. Whether substantial evidence on the whole record supports the Board's finding that the Company unlawfully assisted the Union of Transportation Employees in violation of Section 8(a)(2) of the Act.

3. Whether substantial evidence on the whole record supports the Board's finding that the Union of Transportation Employees violated Section 8(b)(1)(A) of the Act by threatening to discriminate against certain employees, and by promising preferential treatment to other employees, in disregard to its duty of fair representation.

4. Whether the Board's remedy was proper under the Act.





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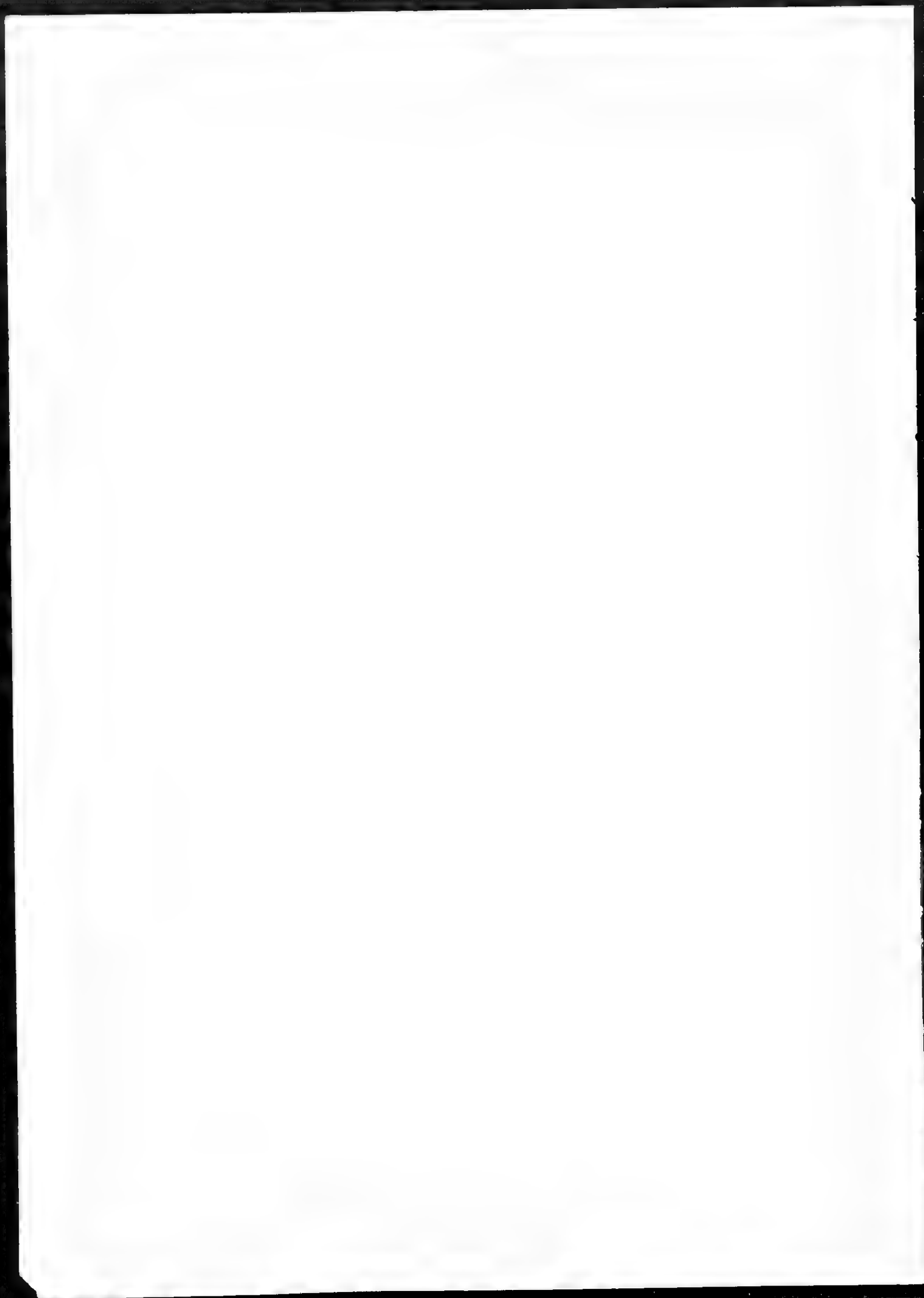
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# **United States Court of Appeals**

**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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No. 20,077

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TRUCK DRIVERS AND HELPERS, LOCAL UNION 568, affiliated with  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN, AND HELPERS OF AMERICA,

**Petitioner,**

v.

NATIONAL LABOR RELATIONS BOARD,

**Respondent.**

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No. 20,131

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NATIONAL LABOR RELATIONS BOARD,

**Petitioner,**

and

TRUCK DRIVERS AND HELPERS, LOCAL UNION 568, affiliated with  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,  
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RED BALL MOTOR FREIGHT, INC., and UNION OF TRANSPORTATION  
EMPLOYEES,

**Respondents.**

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On Petition to Review, and on Petition to Enforce  
an Order of the National Labor Relations Board

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**BRIEF FOR RESPONDENT  
UNION OF TRANSPORTATION EMPLOYEES**

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## COUNTER-STATEMENT OF THE CASE

### INTRODUCTION

In Case No. 20,077, the Truck Drivers and Helpers Local Union 568 (hereinafter called Teamsters) seeks review of the portions of a decision of the National Labor Relations Board (hereinafter called Board), which teamsters consider unfavorable. This decision was rendered on March 30, 1966 against Red Ball Motor Freight, Inc. (hereinafter called Red Ball), and this Respondent, Union of Transportation Employees (hereinafter called UTE).

In Case No. 20,131, the Board is seeking enforcement of the March 30, 1966 decision and order reported at 157 NLRB No. 107 and printed in the Joint Appendix (hereinafter referred to as J.A.) at pages 193-246. This Court has consolidated the two cases. Jurisdiction is sought under Sections 10(e) and (f) of the National Labor Relations Act (hereinafter called Act).

#### A. Acquisition and Consolidation

In 1962, Red Ball (a trucking company operating in numerous states) purchased Couch Motor Lines, Inc., a trucking company. The latter company had as its operating base a terminal known as the Abbey Street terminal in Shreveport, Louisiana. Red Ball had as its Shreveport base a terminal known as the Airport Drive Terminal. Couch Motor Lines local drivers and dock employees, were represented by the Teamsters. Red Ball local drivers and dock employees were represented by UTE.

From time of acquisition until August 20, 1964, Red Ball operated the two terminals separately. The Abbey Street Terminal employees were governed by a Teamsters contract and the Airport Drive Terminal employees were governed by a UTE contract. On August 20, 1964, Red Ball decided to close the Abbey Street Terminal and maintain only the Airport Drive Terminal in Shreveport.

### **B. UTE Volunteers For Election Despite Pre-existing Contract**

Although the former employees at the now defunct Abbey Street Terminal were now being assigned to the Airport Drive Terminal where there was a pre-existing contract between UTE and Red Ball, UTE, in an effort to be completely fair to all concerned (J.A. 115), agreed to an NLRB election to determine which union would represent the employees at the Airport Drive Terminal. Absent the agreement of UTE, the election could not have been held since UTE was the pre-existing union under an operating contract at the Airport Drive Terminal. The Agreement (J.A. 196) provided that after the date of certification by the Board pursuant to the election, the local drivers and dock employees at the Airport Drive Terminal would be covered by a single contract and that Red Ball would recognize the collective bargaining agreement then in effect with the winning union.

### **C. Inquiries By UTE Members, Question and Answer Sessions**

UTE members were anxious to obtain information on issues pertaining to the forthcoming election which they considered important to their future. Accordingly, UTE officials scheduled various question and answer sessions prior to the first election during which the UTE officials were interrogated by the UTE members (J.A. 39). No statement or promise was made that Teamsters would be on the bottom of the seniority list if UTE won the election (J.A. 116). UTE members were told in response to questioning that their *UTE systemwide seniority* would be protected (J.A. 120), not that they would all be senior to the Teamsters at the Airport Drive Terminal. In answering questions from the membership it was emphasized that the winning union would have to bargain with Red Ball on the question of seniority (J.A. 42-43, 119).

### **D. UTE Wins First Election**

On September 10, 1964, the first election was held (J.A. 197). This

was before the Abbey Street Terminal was closed. UTE won the election. Later the Teamsters filed objections to the election.

#### **E. Training Period At Airport Drive Terminal**

On September 21, 1965, the Abbey Street Terminal was closed and the local drivers and dock employees at Abbey Street were transferred to the Airport Drive Terminal (J.A. 197). There followed a two week training period during which Teamsters worked side by side with UTE members in order for the former to learn the operations at the Airport Drive Terminal (J.A. 210). This was strictly a unique educational period (J.A. 132), not one which could be considered an average or normal period to be used for comparative purposes.

#### **F. Return To Normal Operations**

Following the expiration of the initial two week training period, Red Ball endeavored to put the Company back on a normal operating schedule with cost control that would allow Red Ball to remain competitive (J.A. 133). The Teamsters, however, made the attainment of this end extremely difficult because they refused to conform their reporting times and shifts to the normal Airport Drive Terminal schedule (J.A. 134). This refusal inevitably led to a decrease in their overtime principally because they were not available when the overtime work was required (J.A. 138).

#### **G. First Election Set Aside By Board**

A hearing was held on October 20 and 21, 1964, to air the Teamsters objections. At this time the alleged UTE promises of discrimination against the Teamsters regarding seniority were discussed and considered, as were other Teamster objections. On November 10, 1964, the Board's Regional Director set aside the first election because it found merit in one of the objections and ordered a new election.

### H. UTE Wins Second Election

UTE, On December 2, 1964, was once again elected to represent the Red Ball employees in the second NLRB election (J.A. 197).

### I. Teamsters Object Again

Once again, the Teamsters filed objections to the election. Before the Board rendered its decision on the objections to the second election, the Teamsters brought an unfair labor practice charge against UTE. However, the subject matter of this charge occurred *prior* to the first election and was previously brought out in testimony at the October 20-21 hearings pertaining to the first election. Accordingly, it had been fully considered by the Regional Director at that time.

### J. The Board's Conclusions and Order

The Board concluded that UTE had violated Section 8(b)(1)(A) of the Act by threatening to withhold fair representation from former Teamsters so as to deprive them of their seniority rights and by promising preferential seniority treatment to UTE members. The Board also found that Red Ball had violated Sections 8(a)(1)(2) and (3) of the Act by discriminating and threatening to discriminate against Teamsters in the allocation of overtime.

### STATUTES INVOLVED

Section 8 of the National Labor Relations Act, as amended, (61 Stat. 136, 73 Stat. 519, 29 USC 158) provides in part as follows:

(a) It shall be an unfair labor practice for an employer —

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7;

. . . . .

(b) It shall be an unfair labor practice for a labor organization or its agents —

(1) To restrain or coerce (A) employees in the exercise of their rights guaranteed in Section 7 of this title: Provided that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein . . .

Section 7 of the National Labor Relations Act, 29 USC 157 provides as follows:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3)."

### SUMMARY OF ARGUMENT

1. Neither UTE nor its counsel announced or promised prior to the first election that they would obtain preferential seniority for UTE members. The Board erred in finding to the contrary.

2. UTE members received their normal fair share of overtime and no more. Teamsters complaints about insufficient overtime stem from a situation governed by peculiar circumstances, partly caused by the Teamsters themselves.

### ARGUMENT

#### BOARD'S DECISION NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

The Findings of the Board as to facts must be supported by substantial evidence, *Washington V & M Coach Co. v. Labor Board*, 301 U.S. 142; and as defined by the Supreme Court:



"... Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consolidated Edison Co. v. Labor Board*, 305 U.S. 197, 229.

Furthermore it

"... must do more than create a suspicion of the existence of the fact to be established . . . it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury." *Labor Board v. Columbian Enameling & Stamping Co.*, 306 U.S. 292, 300; see also *Universal Camera Corp. v. Labor Board*, 340 U.S. 474.<sup>1</sup>

The Findings of the Board in the instant case do not meet the required substantial evidence criteria.

**A. No Credible Evidence That UTE Officials Or UTE Counsel Promised UTE Members Special Seniority To The Detriment Of Teamsters**

Contrary to the statements in the Board's Brief, p. 21, there is no proof that any representative of UTE ever "announced that if it won the election all UTE employees would be put on a seniority list ahead of all the Teamsters employees." The situation here was that UTE voluntarily agreed to a new election (J.A. 115). UTE was the existing union with a contract at an existing facility in contrast to the Teamsters position of having to join a new terminal after the Abbey Terminal was closed. Naturally, there was great concern among UTE members as to what the effects of the election might be. Meetings were held between UTE officials and the membership (J.A. 38). Questions were asked the Union officials about pay, seniority and numerous other matters.

In response to questions from the membership union officers explained the possible effect on seniority which the election might cause (J.A. 39).

<sup>1</sup> A too restrictive application of the "substantial evidence" test led to congressional addition to the statute of the words "on the record considered as a whole". See *Universal Camera Corp. v. Labor Board*, supra, p. 485 for discussion.



Other members questioned the effect on them in the event of a lay-off and this possibility was discussed. However, at no time did UTE officials predict that there would definitely be a lay-off after the merger (J.A. 39).

In the course of these meetings when the seniority issue was raised, officers of UTE explained that the surviving union would have to bargain with Red Ball on the seniority issue after the election (J.A. 42-43). Certain lists were displayed at one of these meetings for purposes of illustration, showing the end result if all the employees were dovetailed strictly on a length of service basis and also showing the current status of UTE employees at the Airport Drive Terminal.<sup>2</sup> Contrary to the conclusions of the Board, the UTE officers did not contend or promise that if UTE won the election all Teamsters would be inferior to UTE members with regard to seniority (J.A. 116). Although if the Teamsters were moving to another Teamster Terminal, this would absolutely be the case because of the Teamsters terminal seniority contract provision.

This terminal seniority provision was referred to by counsel for UTE in his letter of September 9, 1965, in reply to the letter from counsel for Teamsters of September 4, 1964 (J.A. 180 and 190). In the letter from counsel for UTE (J.A. 180), it is clear from the first paragraph that no promises regarding seniority could be made by UTE or its officials because there had been no agreement. He goes on to state in the third paragraph of his letter that the UTE systemwide seniority status of UTE members at the Airport Drive Terminal will be protected even if the Teamsters win the election. If the latter happens, the UTE man can retain his UTE seniority by transferring to another Red Ball terminal (J.A. 181). Mr. House also stressed this in his testimony (J.A. 120, 122).

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<sup>2</sup> The UTE members at the Airport Drive Terminal only were shown although the seniority dates indicated were based on the UTE systemwide seniority system. The other seven or eight hundred UTE members in the seniority system were not, of course, listed because it would have been impractical to do so (J.A. 124).

Certainly as counsel for UTE stated in his letter (J.A. 181) it would be illogical and inequitable to put or to agree to put all UTE members at the bottom of the seniority list and all Teamster members at the top. Nor has counsel stated that the reverse order should be followed (J.A. 181).<sup>3</sup>

(1) Greater Latitude Permitted to Union Than  
To Employer in Certain Election Matters

In trying to qualify UTE as a violator of Section 8(b)(1)(A) of the Act the Board's brief continually and repetitiously refers to UTE as having "promised" special seniority to its members. Yet no credible evidence of any such promise has ever been introduced. Certainly UTE was trying to win an election the best way it could — by stressing the UTE contract benefits which included systemwide seniority, not terminal seniority, and more take home pay per week. This is no unfair labor practice in violation of Section 8(b)(1) of the Act. It is interesting and significant to note that in the legislative history of Section 8(b)(1) of the Act the original text was, "It shall be an unfair labor practice for a labor organization or its agents — (1) to interfere with, restrain or coerce" employees. . . . (Sen. Rep. No. 105, 80th Cong., 1st Sess. 50 (1947); 93 Cong. Rec. 4136 (April 25, 1947).) These were the exact terms now applied to employers in Sec. 8(a)(1) of the Act. However, at that time, Senator Ives opposed this amendment as "definitely anti-labor". (*Id.* at 4139-40), and the words "interfere with" were subsequently stricken from the bill (*Id.* at 4399). There is considerably more leeway given to unions than to employers in matters pertaining to union elections. As stated by Cox, in his article entitled, "Some Aspects of the Labor Management Relations Act," 61 Harvard Law Review, pp. 30-31 (1947):

" . . . Although an employer is forbidden to express the hope that he may be able to raise wages and improve working conditions if the Union is defeated (citing

<sup>3</sup> The "contract" was really the big election issue and the seniority issue a corollary one that has been blown up out of proportion by the Board.

NLRB v. Trojan Powder Co., 135 F 2d 337 CCA 3d 1943), the counter argument made by labor organizations to secure union members — that if enough employees join the union it will be able to obtain additional advantages — is clearly legitimate. Nor would it seem to be improper for a union to promise economic advantages only to those who become members."

See also *Wilson Athletic Goods Mfg. Co. v. National Labor Relations Board*, 164 F2d 637 (7 Cir. 1947) wherein the court in considering a union promise of a 30 cents per hour wage increase if it were elected; stated:

"... we fail to discern its impropriety. It was a mild and temperate promise when contrasted with the promises to which the public is accustomed, over the radio, from the platform, and in the public press by candidates in every political campaign."

(2) Even Union Statements That Are Wrong in An Election Do Not Necessarily Constitute A Violation of Section 8(b)(1)(A) of the Act

Unions which participate in an election have the right to conduct a pre-election campaign for the purpose of winning the election. Such campaigns do not affect the validity of an election unless they are conducted in such manner as to impair the employees' freedom of choice. The Board, absent threats or other elements of intimidation should not undertake to censor or police union campaigns or consider truth or falsity of official union utterances unless employees ability to evaluate such utterances has been so impaired by use of forged campaign material or other campaign trickery that the uncoerced desires of the employees cannot be determined in an election. Contentions that Union statements are necessarily coercive even if they are false has been rejected by the Board. See *Merck & Co.*, 104 NLRB 891 (1953); *Dorado Beach Hotel*, 144 NLRB 712 (1963). See also the case of *American Radiator and Standard Sanitary Corporation*, 120 NLRB 1347, where the Board refused to void an election when the winning union had circulated a disputed legal opinion wherein it assured employees

who were members of his union that their rates of pay and other benefits were guaranteed by law if they voted for his union. The Board held that the statement was inaccurate but did not interfere with the employees free choice in the election. In so ruling, the Board cited the case of *Dartmouth Finishing Corporation*, 120 NLRB 262 (1958) which among other things involve an alleged factual misrepresentation on seniority by the winning union. Again, the Board found that the employees free choice was not impaired by the misrepresentation. Thus, even if UTE had made erroneous statements prior to the election, which it did not, the Board could not under the circumstances have voided the election.

In view of the foregoing there is no substantial evidence to support the Board's finding that UTE violated Section 8(b)(1)(A) of the Act. Certainly UTE cannot under the law governing union elections, be held to the "employer" standards which the Board is attempting to apply to it. Certainly a vigorous election campaign can be conducted between two unions without the Board holding that the participants, or one of them, when elected cannot deal fairly and impartially with all members of the unit it represents. UTE fully recognizes that a collective bargaining agent is required to do so and there is no evidence in the record contrary. The action on the part of the Board is premature in that the matter which is being litigated must be determined by collective bargaining after certification of the winning union.

**B. No Substantial Evidence That the Allocation of Overtime Was Discriminatory. UTE Received A Normal Amount of Overtime Which Was Reasonable Under the Circumstances**

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1. Teamsters received an unusual amount of overtime during the educational training period

Because of pending objections to the first election Red Ball, in fairness, agreed and attempted to maintain the status quo for both Teamster and

UTE members at the Airport Drive Terminal after the Abbey Street Terminal was closed (J.A. 162). The first two weeks where the two formerly separate work forces were combined at the Airport Drive Terminal was a unique period in that it was an educating process performed once and never duplicated again. Because of the procedural, mechanical and logistical differences encountered by the Teamsters, they had to work longer than their normal eight hours in order to gain adequate knowledge of their new duties. Since the UTE contract and work schedule was geared to a ten hour per day shift, the Teamsters who were working side by side with UTE men during the two week shakedown period were as a result incurring unusual amounts of overtime (J.A. 210). Of particular concern during this period was the fact that Teamsters were reporting for work in accordance with the schedules followed at the now defunct Abbey Street Terminal. This meant that they arrived for work and departed from work at different times, all around the clock, than the UTE members, thus creating serious assignment problems (J.A. 134, 138). Furthermore, the Teamsters objected to making any changes in their reporting times (J.A. 134).

## 2. Decline In Teamster Overtime at Expiration of Training Period Due To Circumstances

Following the initial substantial amount of overtime allocated to Teamsters during the two week training period, overtime was allocated on a work load basis as Red Ball attempted to resume more normal operations. Whenever possible, overtime was awarded to Teamster and UTE men equally, but this could only be done to the extent that the workload would permit. Given the different reporting and quitting times of the two unions' members there was bound to be a disparity in overtime with either the Teamster members or UTE members getting more. The volume of freight varies from day to day (J.A. 59, 137, 157). Under the circumstances with UTE men normally working a ten hour schedule as opposed to the Teamsters normal eight hour schedule, UTE men happened to be available at the time the overtime was required (J.A. 138, 157). Clearly there was no intent to award the



overtime on a discriminatory basis. The peculiar circumstances of the different reporting times and shifts inevitably led to the disparity in the overtime.

The Board relies chiefly on the testimony of Smiley, Ainsworth and Salley, who alleged that Dock Superintendent Baker made the statement that he was going to let UTE men get all the overtime they wanted. Yet, Smiley's timecard demonstrated that he was not at work the day the statement was allegedly made (J.A. 66). The testimony of Salley and Ainsworth on this point does not constitute the substantial evidence required to support the Board's finding.

### 3. Seven Employees Not Discriminated Against With Regard to Overtime

The Board's finding that seven men were discriminatorily denied overtime was not based on substantial evidence. The same reasons for the Board correctly concluding that there was insufficient evidence present to support a charge that the other Teamsters were discriminated against regarding overtime (J.A. 219, 220, 231), should equally have been applied to the seven men.

Even if there had been sufficient evidence in the record to prove that the seven men had been discriminatorily denied overtime (which UTE denies), this in and of itself is not sufficient grounds, under the substantial evidence rule, to set aside an election.

Furthermore, the weeks used to determine the alleged disparity of overtime by the Board were not determinative because they were selected in accordance with the statisticians best guess, not by any set factual formula.



## CONCLUSION

For all of the foregoing reasons, Respondent, Union of Transportation Employees, respectfully urges this Honorable Court to find that the decision and order of the Board with respect to the matters herein discussed in Case No. 20,131 is not supported by substantial evidence, and to direct the Board to certify the results of the second election of December 2, 1964.

Respectfully submitted,

F. LYNN ESTEP, Jr.

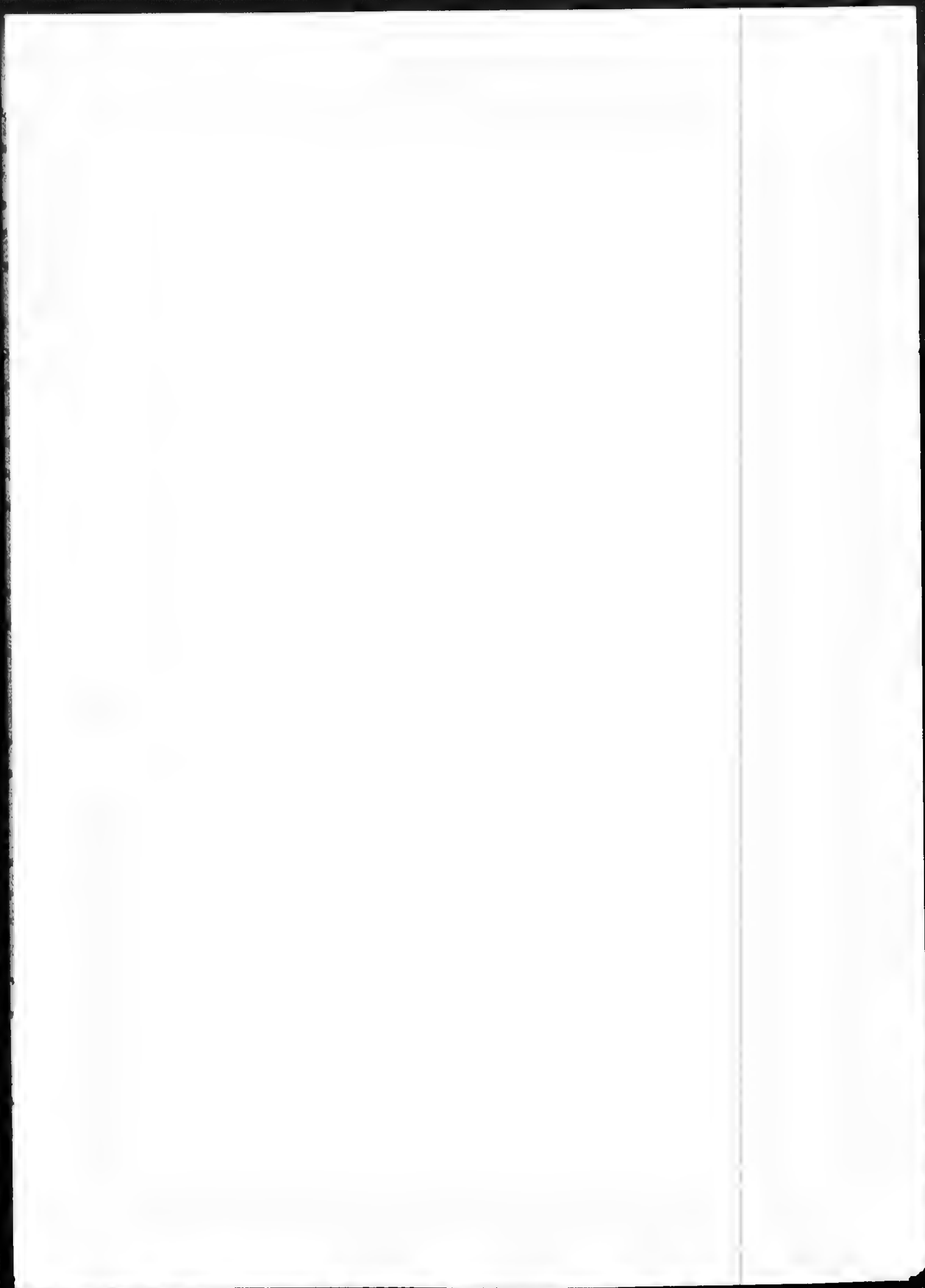
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September 5, 1966



BRIEF FOR RESPONDENT  
RED BALL MOTOR FREIGHT, INC.

**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,077

TRUCK DRIVERS AND HELPERS, LOCAL UNION 568, affiliated with  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN,  
AND HELPERS OF AMERICA,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 20,131

NATIONAL LABOR RELATIONS BOARD.

Petitioner,

and

TRUCK DRIVERS AND HELPERS, LOCAL UNION 568, affiliated with  
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AND HELPERS OF AMERICA,

Intervenor,

v.

RED BALL MOTOR FREIGHT INC.,  
and  
UNION OF TRANSPORTATION EMPLOYEES,

Respondents.

On Petition for Review and on Petition for Enforcement  
of an Order of the National Labor Relations Board

United States Court of Appeals  
District of Columbia Circuit

FILED AUG 1 1968

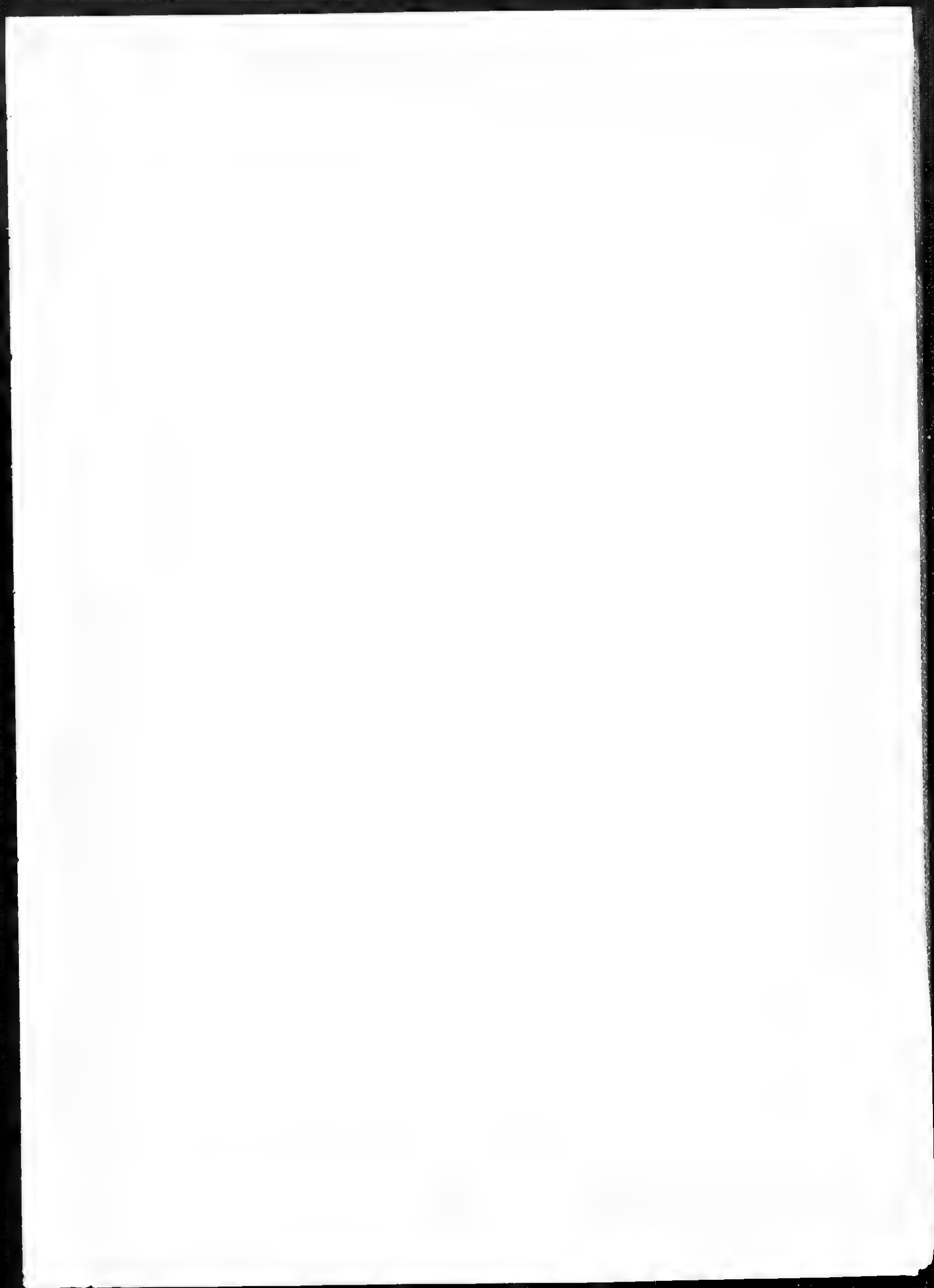
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## STATEMENT OF QUESTIONS PRESENTED

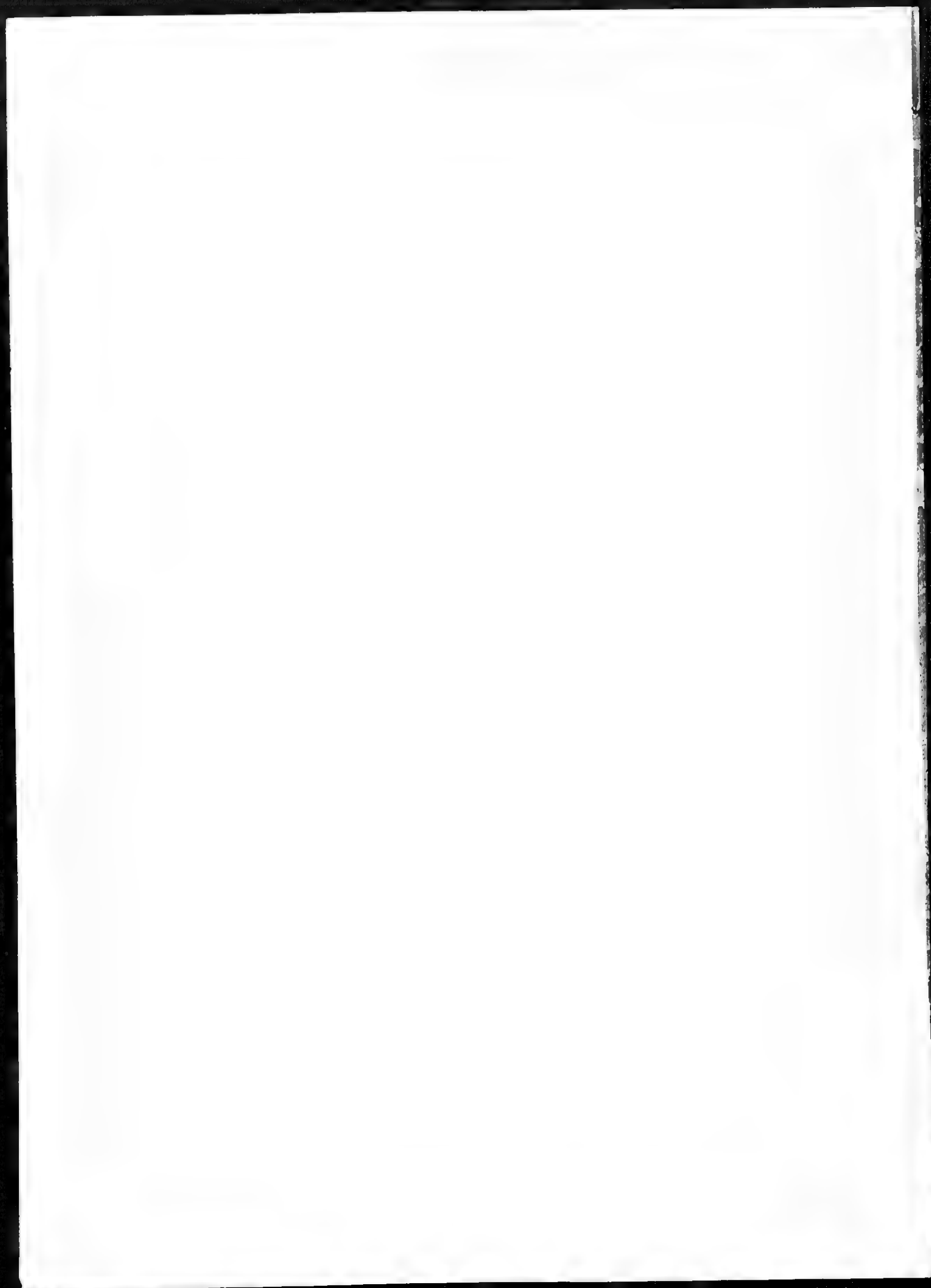
The questions presented, as formulated in the prehearing conference stipulation, are set forth at pp. 1-2 of the Joint Appendix.

A. The issues in Case No. 20,077 are as follows:

1. Whether the Board properly found that the Company did not discriminate against certain employees in the assignment of overtime, in violation of Section 8(a)(1) and (3) of the Act.
2. Whether the relief granted by the Board was sufficient to effectuate the purposes of the Act.

B. The issues in Case No. 20,131 are as follows:

1. Whether substantial evidence on the whole record supports the Board's finding that the Company discriminated against certain employees in regard to the assignment of overtime, in violation of Section 8(a)(1) and (3) of the Act.
2. Whether substantial evidence on the whole record supports the Board's finding that the Company unlawfully assisted the Union of Transportation Employees in violation of Section 8(a)(2) of the Act.
3. Whether substantial evidence on the whole record supports the Board's finding that the Union of Transportation Employees violated Section 8(b)(1)(A) of the Act by threatening to discriminate against certain employees, and by promising preferential treatment to other employees, in disregard of its duty of fair representation.
4. Whether the Board's remedy was proper under the Act.



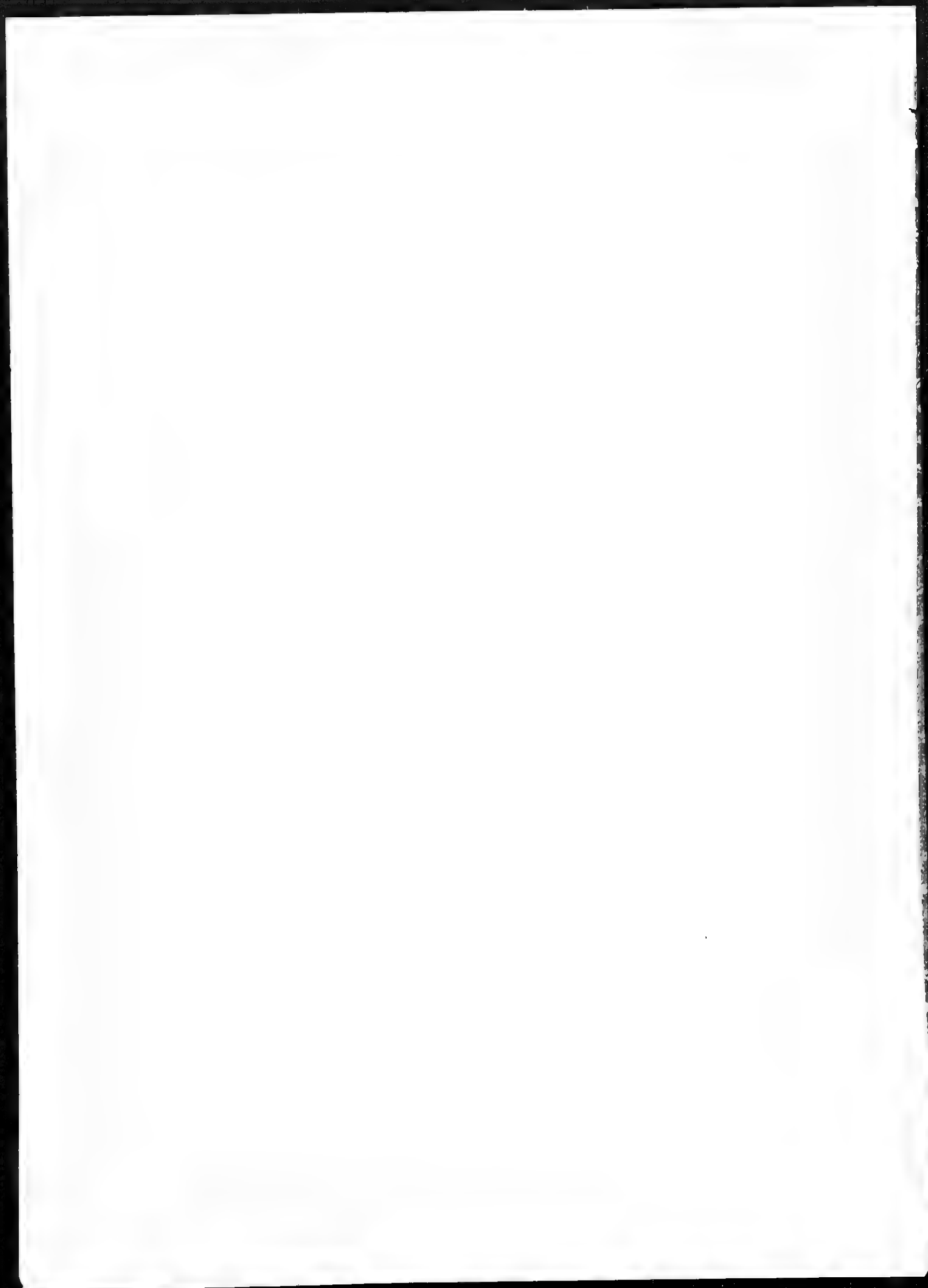


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# **United States Court of Appeals**

**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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NO. 20,077

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TRUCK DRIVERS AND HELPERS, LOCAL UNION 568, affiliated with  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN,  
AND HELPERS OF AMERICA,

**Petitioner,**

v.

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**Respondent.**

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NO. 20,131

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UNION OF TRANSPORTATION EMPLOYEES,

**Respondent.**

---

On Petition for Review and on Petition for Enforcement  
of an Order of the National Labor Relations Board

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**BRIEF FOR RESPONDENT**

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## STATEMENT OF THE CASE

The issues and Statement of the Case as presented by the National Labor Relations Board in its brief are basically correct with respect to historical background on uncontested fact.

Briefly, after Red Ball had acquired Couch Motor Lines and after the Couch Motor Lines corporate name had been changed to Red Ball Motor Freight (Southeast), Inc., and after its corporate merger with Red Ball had been approved, Red Ball proposed to all unions involved to merge the former Couch terminal in Shreveport, Louisiana, and the Red Ball terminal in Shreveport into a common, single terminal to be operated from the Airport Street terminal operated by Red Ball as opposed to the Couch operation.

The Teamsters<sup>1</sup> represented all employees on the former Couch line and the UTE represented all employees on the Red Ball line.

All the parties, that is the Teamsters, who represented all the employees of the former Couch line, including those at the Couch terminal in Shreveport, and the UTE, who represented all the employees of Red Ball, including those at the Airport terminal in Shreveport, were notified that the Company intended to merge the two terminals. Subsequently, all parties agreed that a consent election would be conducted among the employees involved and that the Company would recognize the victorious union and would apply that contract of the victorious union presently in effect.

The first election was held on September 10, 1964, while the employees were still at their separate terminals. The UTE won by 2 votes, but the Teamsters filed objections contending that the UTE had rendered a fair election impossible.

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<sup>1</sup> Truck Drivers and Helpers Local Union 568 is referred to as "IBT", "Teamsters", or "Local 568". The Union of Transportation Employees is referred to as the "UTE", and Respondent, Red Ball Motor Freight, Inc., as "the Company" or "Red Ball".

The Board, in its brief, states, "On September 21, 1964, Red Ball closed the Abbey Street terminal and consolidated its operations with those of the Airport terminal (JA 197; 12); all of the Red Ball employees at the Abbey Street terminal were transferred to the Airport terminal.

Since the representation question remained unresolved at the time of the consolidation, Red Ball decided to continue the working conditions of the two groups without change, although they were now all merged into a single operating group (JA 209-210; 134). Red Ball takes exception to the Board's claim that Red Ball decided to apply the two contracts according to their respective union affiliation. Red Ball, at no time, stated to the employees that either of the two contracts would be continued in effect. What was announced to the employees was that the terms and working conditions set out under the two contracts would be continued as best as was possible, and that no changes would be made. This is borne out by the Board's own citations of the Joint Appendix.

At this point it is important to note that all of the alleged objectionable conduct engaged in by the UTE and/or Red Ball occurred prior to October 20 and 21, 1964. On October 20 and 21 a hearing was held on these matters and on November 10, 1964, the Regional Director issued his report on objections, finding merit in one of the objections, setting aside the election and directing a second election. Thus, all allegations of objectionable actions were aired and litigated on October 20 and 21, 1964, at a time when both the Teamsters and the Labor Board were aware of all the charges and objections, including the alleged discriminatory allotment of overtime which supposedly began on October 5, 1964.

The second election was held on December 2, 1964, which again resulted in a victory by 2 votes for the UTE.

The Board States (page 8 of its brief):

"From the following Monday, October 5, to the date of the second election, December 10, (this is obviously a misprint since the second election was held on December 2,

1964) there was a sharp reduction in the daily overtime worked by the Teamster employees, and a substantial increase for UTE employees (JA 211)".

There was an admitted reduction in the daily overtime worked by Teamster employees which is readily explained.<sup>2</sup> There was, however, no increase for UTE employees, as contended by the Board.

### SUMMARY OF ARGUMENT

#### THERE WAS NO DISCRIMINATORY APPLICATION OF OVERTIME

At the end of the two-week training period following the merger of September 21, on or about October 2, 1964, Red Ball notified all employees in two meetings on the dock that because there had been a lot of confusion about which contract would apply that each employee would work according to the terms and conditions that he had formerly worked under. That is, the Teamsters, according to the Teamster provisions, and the UTE employees would work according to the UTE provisions. They were all assured there would be no changes applied to them. Thus, all employees worked their same scheduled shifts, and same routes, and basically in their same job duties (JA 162). Red Ball attempted to have the Teamsters change their shifts in some instances to coincide with the more efficient operations of the UTE employees, but the Teamsters union resisted and their hours were continued (JA 134). *Thus, it was the Teamsters* who refused the offer of uniformity in operations. Since no working conditions were changed it was essential that the UTE employees continue under the same conditions as they had had prior to the merger, and so, too, would the Teamsters.

There is not one scintilla of evidence in the record that the Teamsters union had received overtime in any appreciable amounts prior to the merger while they were still working at the Abbey Street terminal, nor is there a shred of evidence that the UTE employees received more overtime after the merger than they received prior to the merger.

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<sup>2</sup> As the Board noted, there was no allegation of discrimination because of this period of time. See the Board's brief, page 6, inclusive of footnote 4.



On the contrary, in the meeting of October 2, where management officials and attorneys spoke to the employees after the physical merger of the two terminals, all employees, both Teamster and UTE, were told that they were going to be treated as they had been before the consolidation of the terminals and that "not a single man would lose a single dime of money in hourly rate of pay or a single hour from the guarantee of his contract." (JA 162)

Considering all the confusion which had existed during the initial two-week period following the merger, the policy of the Company to continue as it had in the past, the differences in the working conditions, and the length of time between the merger and the second election of December 2, 1964, there is little reason to wonder why there would be some disparity between the overtime amounts.

The Board makes much to do about the amount of overtime the Teamster employees received during the first two weeks following the merger. The necessity for this increase in overtime for the Teamsters was adequately explained by Company officials (JA 132-133) and by the employees, themselves. (JA 124-127) That period of time, therefore, should be excluded as a necessary emergency. Even the Board contends that only after the initial two-week period did the alleged discrimination occur. (Board's brief, page 8)

# I.

## **Teamster Members Giddens and Hicks Were Not Denied Overtime**

The Board has conveniently used only those figures in evidence which support its conclusions, but overlooks the total facts. For example, the Board stated that during the nine-week period following the training program Teamster Giddens received 5.43 hours of overtime, but attempts to excuse Teamster Hicks, who received 12.42 hours of overtime during this period because most of this overtime was work on trucks away from the terminal

and thus the supervisor did not have the opportunity to deny Hicks overtime on the dock. The Board is quick to point out that UTE members Lofton and Green worked 19.31 and 19.94 hours of overtime, respectively.

To consider these figures alone on their face it is apparent that the two UTE members averaged during the nine-week period 19.62 hours of overtime. The two Teamster members, Giddens and Hicks, received an average of 8.92 hours overtime. Over the nine-week period this amounted to a total difference of 10.70 hours. Dividing that number of hours by nine, the number of weeks, a dividend of 1.19 hours is yielded. Dividing that 1.19 hours by five, the number of work days per week, a dividend of 0.23 hours is yielded.<sup>3</sup> This 23/100ths of an hour amounts to less than 15 minutes per day, certainly an insubstantial amount. Moreover, these figures completely overlook the fact that UTE members had an opportunity to work a sixth and seventh day at straight time, which gave them additional exposures to opportunities for overtime.

## II.

### **Teamster Members Nash, Rachel and Thompson Were Not Denied Overtime**

With respect to Nash, Rachel and Thompson, the Board argues that they worked from seven to nine hours overtime each during the ten-week period following the physical merger of the two terminals. It should be pointed out that General Counsel's Exhibits 11 and 12, which are a comparison of the overtime worked by the two groups, show that the Teamsters worked a total of 18.48 hours average overtime at premium pay. Thus, Nash, Rachel and Thompson worked considerably less than their fellow Teamster members, but by their own choosing. This falls in line with the undenied testimony adduced at the hearing. Robert May, a Teamster member, testified that other Teamster member employees besides himself did

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<sup>3</sup> The hours are clocked and registered in terms of 1/100ths of an hour and thus 0.23 is the equivalent of 23/100ths of one hour.

not like overtime.<sup>4</sup> (J.A. 59) May did not name the individuals, and the General Counsel made no effort to distinguish which employees were being allegedly discriminated against.

Foreman Brandon, who usually solicits the men for overtime, testified that Rachel did not like to work overtime, which was voluntary. (J.A. 156) Brandon further testified that Thompson also did not like overtime (J.A. 156). Neither Rachel nor Nash denied this.

This falls in line with the fact that neither Rachel nor Thompson worked as much overtime as other Teamster members during the two-week period when all Teamsters worked considerable overtime.

*Only Philip Thompson of the three attempted to deny that he had refused overtime.* His denial was not unequivocal. He was specifically asked if he had never said to Brandon that he preferred not to work overtime; he answered, "I won't say that I didn't, have never made the statement, I mean, if I had plans, someone was sick - I remember on one occasion my baby was sick." (J.A. 164) It is clear that Thompson on occasion refused overtime work.

### III.

#### **Teamster Members Gremillion, Lemoine and Fuller Were Not Refused Overtime**

With respect to Teamster employees Gremillion and Lemoine it is pointed out and emphasized that neither of them testified as to whether or not they wanted overtime, refused it, or were denied it. There is no evidence relating to Gremillion and Lemoine, except the general statement of Robert May. The burden of proof was shifted to the General Counsel that they wanted overtime work but were denied it.

Joseph Fuller's rebuttal is incredible on its face (see J.A. 164).

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<sup>4</sup> May himself only worked 3.14 hours during the entire period.

## ARGUMENT

With specific evidence relating to the denial of overtime, absent from the record, discrimination cannot be proved by mere inference or suspicion. It must be proved by substantial evidence. *Universal Camera Corp.*, 340 U.S. 474. The burden of proof was on the General Counsel to show that discrimination. *Winett, Inc.*, 135 NLRB 1305. This he failed to do here.

Surely, a lawful position or act should not serve as a basis to infer unlawful motive. Indeed, it has been held that an unlawful motive is not to be lightly inferred, but that substantial evidence must point to the motive. *NLRB v. McGahey*, 233 Fed 2(d) 406. The burden of presenting such substantial evidence is on the General Counsel for the Board and not the Respondent. See also *NLRB v. West Point Mfg. Co.*, 245 Fed 2(d) 783.

In *NLRB v. Atlanta Coca Cola Bottling Company*, 293 Fed 2(d) 300, the Court said:

"In each case it must be established whether legal or illegal reasons for discharge was the actual motivating one and if evidence is present, we must ascertain whether the evidence is at least as reasonably susceptible of the inference of illegal discharge drawn by the Board as it is of the inference of legal discharge."

This proposition was not disturbed, but was in effect accepted by the Supreme Court in *NLRB v. Walton Mfg. Co.*, 369 U.S. 404. Moreover, there was no evidence of union animus in the instant case, and the General Counsel was not able to prove a single instance of independent union animus pointing to any unlawful motive. The Board itself, in *Precision Castings Co.*, 37 NLRB 774, said it would dismiss a complaint where the facts present only a debatable question of ultimate fact and a decision on the ultimate fact made it necessary to draw inferences from inconclusive, equivocal or evidentiary fact before a legal conclusion could be formed.

Negative evidence alone cannot supply the proof which must underlie a conclusion if it is to stand.

**Red Ball Did Not Violate The Act  
By Preferring The UTE**

The Board argues that Red Ball violated the Act by denying overtime to Teamsters union employees and thus supporting the UTE. This argument is based on the fact that at the end of the initial two-week period the Teamster employees had a substantial cut back in overtime. Says the Board, this is buttressed by the fact that Dock Superintendent Red Baker announced at the end of the two-week period that the UTE members should get all the overtime they wanted. Further, says the Board, Red Ball notified all the Shreveport employees of its preference for the UTE.

As has been pointed out, there was presented absolutely no evidence as to the number of overtime hours Teamster members received prior to the merger or the number of hours the UTE members received prior to the merger. Without this evidence, there is no way to determine whether or not either of the two groups got more overtime or less overtime than they had prior to the merger. To change the working conditions of the employees for any purpose would have been a violation of the Act and Red Ball would have been acting at its peril.

It was announced to all the employees that because of the merger and presence of two union contracts, all the employees would be treated exactly as they had been prior to the merger. There was no evidence presented by the General Counsel to prove that this was not the case. There were no unilateral changes made with respect to the employment or working conditions of any employee, and this was not contested.

Of course, Red Ball preferred the UTE contract. It was the more economical. Both contracts were put in the record and it is clear that the UTE contract is economically advantageous to the Company. Because of the larger allowable number of straight time hours without overtime penalties, it was likewise advantageous to the UTE.



The issues between the two unions were clear cut. Each had already negotiated its contracts and under the collateral agreement of September 1, 1964, it had been agreed by all parties that whichever union won the election, their contract would apply. Thus, there was no argument as to which union would gain the most for the employees, since it had already been decided. Bailey, of Red Ball, simply pointed out that the employees were aware of the two contracts and that the UTE contract assured all of the employees more take home pay. This would be true even on an overtime or straight time basis. No one was misled. It was mathematical.

The Board has long held that an employer's preference of one union over another was perfectly lawful and permissible where there was no interference by way of threats or coercion. *Rold Gold of California, Inc.*, 123 NLRB 285.

The entire case of the General Counsel with respect to unlawful assistance to the UTE rests on the alleged statement of Dock Superintendent Baker. It was alleged that on October 6, 1964, Baker said that for the next two weeks he was going to let the UTE men get all the overtime they wanted. This bare statement, isolated and by itself, is the essence of the Board's case. The circumstances surrounding the testimony concerning this is suspicious indeed. Employee Smiley testified that he was present on the dock on October 6th when Baker allegedly made this statement. (J.A. 66) But, both General Counsel's Exhibit 11 and Smiley's own time card show that he was not working the week beginning October 5, 1964, for that two-week period. This is undenied. (J.A. 66) Smiley further testified that the only other employees present were John Salley and Leo Ainsworth (J.A. 66).

Although Smiley was not present, he testified that on that date Baker stated that he was going to see the UTE men got all the overtime they



wanted for a period of *two-weeks* (J.A. 64).<sup>5</sup> There must have been some collusion on the part of these witnesses, because, if in fact Smiley was not there, he could not have known that Salley and Ainsworth were present. Ainsworth, on the other hand, testified that John Groves and Marvin Joiner were present (J.A. 73-74). He admits that Smiley was not present.

It was this isolated remark of Baker's taken from context, which has led to this contest. All of the witnesses agreed that Baker made this statement as he was coming out of his office (J.A. 67), and that he was speaking to no one in particular on the dock when he made the statement (J.A. 73).<sup>6</sup>

Basically, the Trial Examiner's logic is erroneous as to discrimination. He correctly excludes most of the Teamster members from any direct right to overtime because there was insufficient evidence to support the allegation. Although he correctly finds this, and because he could find no direct evidence relating to the seven herein involved, he concludes that because of the overall disparity there must have been some discriminatory motive and, therefore, based his conclusion on the illusory "credibility issues".

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<sup>5</sup> The Trial Examiner would have excused what he finds to be a disparity had Red Ball attempted to justify Baker's remarks on the grounds that the Company was trying to equalize the overtime for the UTE to that which had been granted to the Teamsters during the initial two-week period. (J.A. 229) Although the Trial Examiner said that the employer is prevented from using this argument as grounds for defense because there was no policy followed, it was the General Counsel's own witness, John Salley, who testified that for the next two-week period prior to the date of October 20th, which coincides with the two-week period following the time Baker allegedly made the remark, he did receive more overtime than he had previously worked. (J.A. 46)

<sup>6</sup> There was no testimony about what Baker said prior to this statement, after, or who he was talking to. It comes simply as an isolated statement, supported by nothing but suspicious testimony.

**The Board's Remedy  
Was Improper Under The Act**

The only objections to the conduct of the election held on Wednesday, December 2, 1964, which were before the Trial Examiner all pertain to the allegations of the complaint. Regardless of the outcome of the unfair labor practice case, the election of December 2, 1964, should not have been set aside, but the winning union certified. In *Great Atlantic and Pacific Tea Company*, 101 NLRB 118, the Board established a cut off date for objections to an election as of the execution of the consent election agreement. Later, this cut off date was amended in *F. W. Woolworth Company*, 109 NLRB 1446, to the date of the Board's decision and direction of election. This case was later modified by *Goodyear Tire and Rubber Company*, 138 NLRB 453, to establish the cut off date for objections as of the filing of the original petition. This is the doctrine presently in effect.

There has been only one decisive case with respect to a cut off date occurring between a first election which was set aside and a second election. In that case, *Breman Steel Company*, 115 NLRB 1581, the parties entered a stipulation for certification upon consent election on August 15, 1955, and thereafter an election was held on August 19, 1955. Timely objections were filed and on September 16, 1955, the Regional Director issued his report on objections, recommending that the employer's objections be overruled. The employer took exceptions to this report and on January 27, 1956, the Board issued its decision, overruling the Trial Examiner and finding merit in the employer's exceptions. The election was set aside and a new election ordered. In the meantime, on October 5, 1955, the employer granted a wage increase to which the union filed objections after the second election. The Board discussed the *Woolworth* and *Great Atlantic Tea Company* cases and stated:

"The rule of the *Woolworth* case has had its genesis in the *Great Atlantic and Pacific Tea Company* case where the Board determined for the first time that it would consider upon their merits all allegations of interference with an election provided only that the alleged interference occurred either after (1) the execution by the parties of a consent election agreement or a stipulation for certification upon consent election, or (2) the date of issuance by the Regional Director of a notice of hearing, as the case may be. Thereafter, in the *Woolworth* case, the Board recognized that the cut off date (issuance of notice of hearing) provided in branch (2) of the foregoing rule, would normally be more remote from the date of the election than the cut off date provided in branch (1) of that rule (execution of consent election agreement, etc.). Accordingly, to equalize these periods, the Board modified branch (2) of the A&P rule by making the applicable cut off date the date of the issuance of the decision and direction of election, or, where such decision and direction is amended, the date of issuance of such amendment.

"The *Woolworth* rule thus reflects the policy of selecting a cut off date with the view to minimizing the occasions for setting aside an election for which conduct is unreasonably remote from the date of the election. This policy was effectuated in the *Woolworth* case by substituting the date of issuance of the decision and direction of election for the "more remote day of issuance, notice of hearing", and by providing that where a decision and direction of election were subsequently amended, the date of issuance of such amendment would control.

"So, here, *when the issue is whether to select as the cut off date the execution of the stipulation for certification or the less remote date of issuance of our decision directing the second election, we believe it would be more consummate with the policy of the Woolworth case and with sound administration of the Act to select the latter date.* Accordingly, we will not consider on the merits any alleged interference in this case occurring before January 27, 1956, when our decision directing the instant election issued." (Emphasis supplied.)

There has been no modification for the cut off date or conduct occurring between two elections. Keeping this in mind and considering objections to conduct occurring after the first election, but before even a hearing on the objections to the first election, it seems logical to apply the rule in the *Breman Steel Company* case and establish the cut off date as the issuance of the ruling on objections to the first election, which issued on November 10, 1964, more than a month following the alleged discriminatory distribution of overtime on October 6, 1964.

If, under the *Goodyear Tire and Rubber Company* case, to use the cut off date as the execution of the consent election for objections which occurred between the first election and the second election, would be to allow no issue ever to be settled or corrected because anything during the interim of the execution date of September 1st would be considered, regardless of subsequent decisions to set aside an election. Thus, the Teamsters could again, after a third election, file objections alleging interference which occurred between September 1, 1964, the date of the original consent agreement, and the date of the Regional Director's decision. Evidence could be suppressed until later it became useful to set aside a third election. This, of course, prolongs litigation and is repugnant to the purposes of the Act.

This was the situation in the instant matter. It has become clear that by October 20, 1964, the date of the hearing of the objections to the first election, the Teamsters union was well aware of the claim of discriminatory distribution of overtime (as they had filed a grievance thereon - J.A. 211), yet, nevertheless, they failed and deliberately refused to bring the matter up at the hearing, but raised it for the first time in objections to the second election.<sup>7</sup>

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<sup>7</sup> Although the transcript on the hearing on objections to the election held on October 20, 1964, in Case No. 16-RM-273, is not part of this record, it is a public record. On page 152 of the transcript of that hearing, Mr. Wells, attorney for the Teamsters Union, stated that he was not bringing up other matters to which he could object, but was holding them back for a possible unfair labor practice charge for a later date.

It cannot be argued that the hearing was limited to merely the specific objections, since it is well established that the jurisdiction of the Regional Director in post election investigations is not limited to specific issues raised by the parties. *International Shoe Company*, 123 NLRB 682.

The objecting union should not be allowed to abuse Board processes for its own benefit by bringing up an objection to a second election which it was well aware of prior to the hearing on the objections to the first election. To entertain an objection when it was deliberately suppressed and held back from litigation in the hearing on the first election is to grant to the Teamsters union the benefits of their own deliberate abuse of the Board's processes and prolongs litigation. Certainly, the setting aside of the first election and the conducting of the second election nullifies any interference or unfair labor practice which took place prior to the second election.

The instant campaign between the Teamsters union and the UTE was a clear cut and well understood issue. The two groups were voting for one contract or the other, knowing full well that whichever union contract they selected would apply. There was no threat or coercive intimidation of any employee which would interfere with that choice.

Said the Board in *Liberal Marketing*, 108 NLRB No. 220, "We seek to establish ideal conditions insofar as possible, but we appraise the actual facts in the light of realistic standards of human conduct. It follows that elections must be appraised realistically and practically, and should not be judged against theoretically ideal but nevertheless artificial standards." Further, said the Board: "Basically, we feel that the results of the secret ballot, conducted under government sponsorship and with all the safeguards which have been developed throughout the years, should not be lightly set aside. Like any other contest in which the stakes are high, the losing party is likely to protest the results but this Board cannot be influenced by any subjective considerations."



Even assuming arguendo that the remark allegedly made by Baker did in fact occur, it occurred at a period of time so remote to the election that it would not have had any effect. See *Southdown Sugars, Inc.*, 108 NLRB No. 17, where the union threatened employees with violence two weeks before the election. The Board held that this act was isolated and remote and refused to set aside the election. The same thing was true in the *Liberal Market* case, *supra*, where two unions were involved and the Company is supposed to have made the statement that the contract with the intervening union would be best approximately *two months before the election*. The Board again refused to set aside that election on the ground that the statements, otherwise coercive, in this instance were remote and isolated from the election. The Board said there that the evidence was not sufficient when viewed in the background of extensive pre-election campaigns by both unions. That is exactly the case in the instant matter. The alleged statement of Baker's occurred approximately two months before the election. Here, the employees already knew of the two contracts, had sufficient opportunity to appraise them, and, indeed, both unions had made comparisons in an attempt to persuade the employees to one contract or the other. See also *Krambo Food Stores*, 101 NLRB No. 132.

In illustration of the fact that the *Breman* case has not been modified, the Board, in *Rockwell Industries, Inc.*, 123 NLRB 644, followed the *Breman* case to set the cut off date at the execution of the second stipulation, which, in the instant matter, would correspond to the report on objections. The report on objections issued on November 10, 1964, almost one month before the second election, allowed the complaining union sufficient time to state any additional valid objections. The union should not be permitted to try its case before the Board on a piece-meal basis.



CONCLUSIONS

Accordingly, Respondent, in Case No. 20,131, Red Ball Motor Freight, Inc., urges that this honorable Court refuse to enforce the decision and order of the National Labor Relations Board and direct that the results of the second election of December 2, 1964, be certified.

Respectfully submitted,

CHARLES D. MATHEWS

P. O. Box 10837  
Dallas, Texas 75207

SCHOOLFIELD AND SMITH

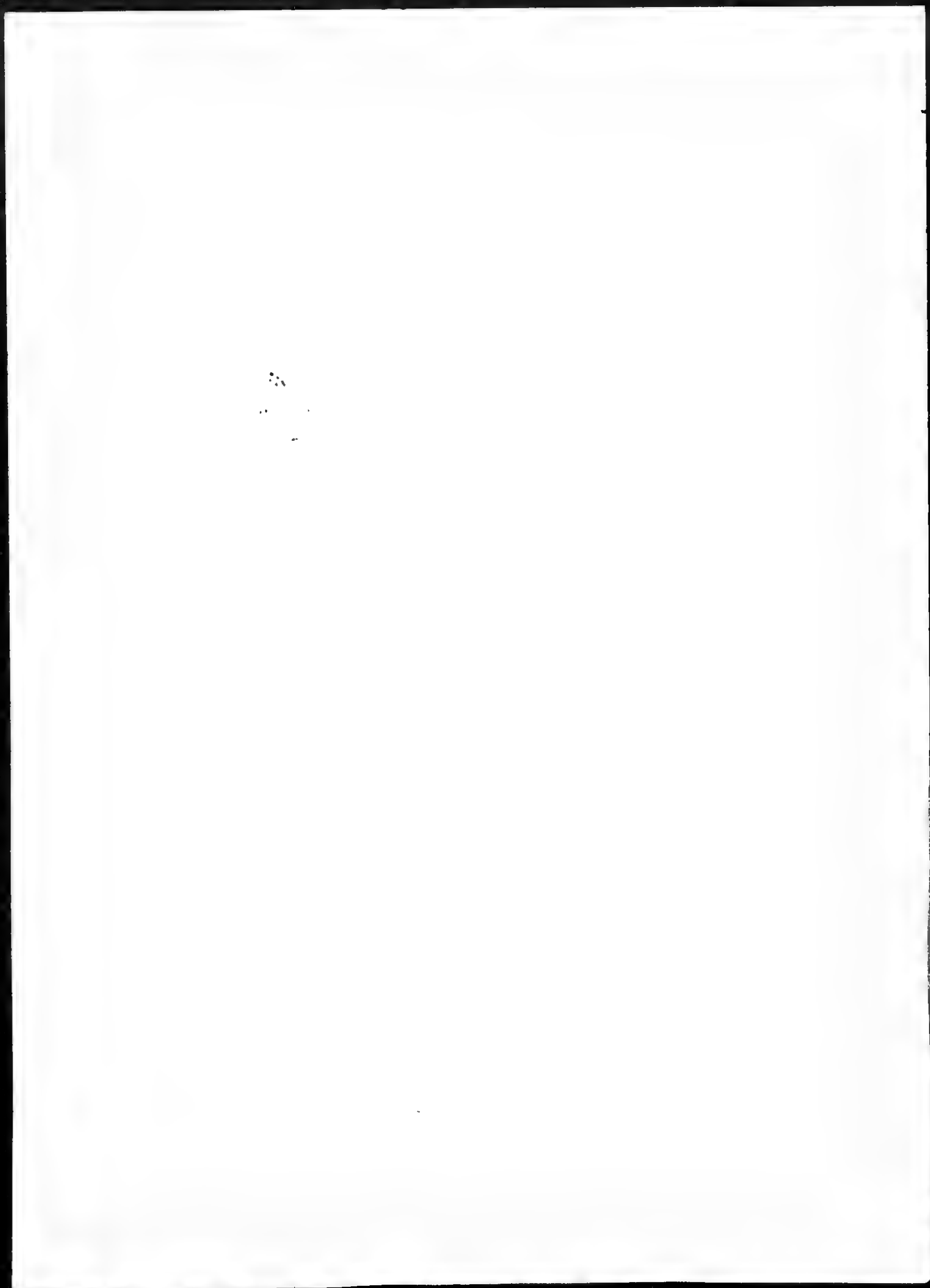
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MULLIN & CONNOR  
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Washington, D. C.

*Attorneys for Respondent*

Dated this 19th day of August, 1966.



MR. SCHOOLFIELD: Appearing for the Respondent, Charles D. Mathews, M-a-t-h-e-w-s, vice president and general counsel of Red  
 5 Ball Motor Freight, P. O. Box 10837, Dallas, Texas and Allen P. Schoolfield, Jr., and Hugh M. Smith of the law firm of Schoolfield & Smith, 1200 Republic National Bank Building, Dallas, Texas.

MR. ESTEP: Appearing for the Union of Transportation Employees, Lynn Estep, Jr., attorney at law, 505 North Ervay, Dallas, Texas.

TRIAL EXAMINER: Are there any other appearances?

MR. SCRUGGS: B. D. Scruggs, president, Union of Transportation Employees.

\* \* \* \* \*

8 MR. RICHARDS: Mr. Examiner, if you will notice the Complaint herein has an 8(a)2 allegation against Red Ball Motor Freight. The first amended charge filed in this case on January 19, 1965 contains such an allegation and subsequently it was deleted in the third, in the second amended charge.

The Charging Party now desires to file its third amended charge, bringing forward the 8(a)2 allegation that was contained in its first initial charge filed on January 19.

\* \* \* \* \*

9 MR. SCHOOLFIELD: Respondent objects to this method of procedure and states quite frankly that the 8(a)2 allegation in the Complaint is not supported by a charge, that the charge has been amended and any charge that is attempted to be filed at this time is subject to the limitations of Section 10(b).

\* \* \* \* \*

10 TRIAL EXAMINER: I would like to ask Mr. Richards and Mr. Palmer to go over the formal papers with me so that I am looking at the same documents that they are referring to.

GC 1(b), I take it, is the original charge and the first amended charge is GC 1(d).

Now, where is the reference — I see. You are referring to it in the next to the last paragraph of your appendix?

MR. RICHARDS: That is correct, Your Honor.

TRIAL EXAMINER: Where is the second amended charge? This is General Counsel's Exhibit 1(i).

MR. RICHARDS: It is the second amended charge and in the filing of it there was an omission of the 8(a)2 language from the appendix, this paragraph to which you refer, GC 1(d), the next to the last paragraph was omitted in the filing —

\* \* \* \* \*

14 TRIAL EXAMINER:

\* \* \* \* \*

Mr. Richards, let me ask you one thing.

Is it your position that this omission was inadvertent in the appendix to the first amended charge or was this intentional?

MR. RICHARDS: It was not inadvertent.

TRIAL EXAMINER: It was intentional?

MR. RICHARDS: It was not inadvertent.

\* \* \* \* \*

19 MR. PALMER:

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We have a stipulation of chronology of events which I would like to propose which would be helpful to the Trial Examiner.

I will make a statement — Well, I will summarize first before I make it in the actual form of a stipulation but on August 20th, 1964, Red Ball, the employer, notified the Teamsters Union and the UTE Union of its intention to close the Couch Terminal here in Shreveport, Louisiana and as a result of that, an agreement was reached between the company and the two unions for the purpose of combining the employees in the two terminals so that they would continue to work at the Red Ball terminal here in Shreveport, Louisiana.

\* \* \* \* \*

MR. SCHOOLFIELD: Each terminal was represented by a different labor organization under a different contract.

\* \* \* \* \*

21 MR. PALMER: All right.

Now, an agreement was entered into by the company and the unions, the Teamsters and UTE for the merging of these two terminals into a single unit.

In this connection the General Counsel proposes a stipulation to the effect that General Counsel's Exhibit No. 2 is the letter dated August 20th, 1964 from Mr. Mathews, addressed to the Teamsters and to the UTE, advising them of the —

MR. SCHOOLFIELD: Respondent will stipulate to the authenticity and has no objection to the admissibility of GC 2.

MR. ESTEP: The Union of Transportation Employees has no objection to the introduction of the exhibit.

MR. RICHARDS: We have no objection to the authenticity. If there are self-serving statements in there we object because it is limited to —

TRIAL EXAMINER: General Counsel's Exhibit 2 will be received.

(The document above-referred to was marked General Counsel's Exhibit No. 2 for identification and received in evidence.)

22 MR. PALMER: General Counsel's Exhibit No. 3 is the agreement which was entered into by Red Ball, the Teamsters and the UTE to put into effect this merger.

The document speaks for itself.

I have furnished all of the parties with copies of this document.

MR. SCHOOLFIELD: Respondent has no objection to the Exhibit GC 3.

MR. ESTEP: The Union of Transportation Employees has no objection.

MR. RICHARDS: No objection.

MR. SCHOOLFIELD: Respondent will stipulate to its authenticity.

TRIAL EXAMINER: Do you so stipulate also, Mr. Estep?

MR. ESTEP: Yes, the Union of Transportation Employees also stipulates.

TRIAL EXAMINER: Mr. Richards?

MR. RICHARDS: I assume so.

As soon as I can check it —

TRIAL EXAMINER: General Counsel's Exhibit No. 3 is received.

(The document above-referred to was marked General Counsel's Exhibit No. 3 for identification and received in evidence.)

23 MR. PALMER: General Counsel's Exhibit 4 is the consent agreement which was entered into by the Red Ball Motor Freight, the Teamsters Union and the UTE on September 1, 1964, providing for a consent election to be held on September 10th, 1964. This is General Counsel's Exhibit No. 4.

MR. SCHOOLFIELD: Respondent will stipulate to the authenticity and has no objection to the admissibility of GC No. 4, the informal consent agreement.

Respondent will state at this time that simultaneously with this consent there was filed by the Respondent pursuant to the agreement of GC 3, an RM petition setting forth a unit of dock and city employees at the Shreveport terminal on Red Ball Motor Freight, Inc., pursuant to the agreement of GC 3 and the RM petition number is in the style of the case, 16-RM-273.

MR. ESTEP: The Union of Transportation Employees has no objection to the Exhibit No. 4 and will consent to its authenticity.

MR. RICHARDS: Charging Party has no objection.

TRIAL EXAMINER: General Counsel's Exhibit 4 will be received.

(The document above-referred to was marked General Counsel's Exhibit No. 4 for identification and received in evidence.)

MR. PALMER: General Counsel proposes to stipulate that an election was held on September 10, 1964, which constituted the first election in Case No. 16-RM-273 of which UTE received 39 votes and



24 the teamsters, 37 votes.

MR. SCHOOLFIELD: The complete election return, there were 78 eligible voters of which 37 cast their ballots for the Teamsters and 39 cast their ballots for the Union of Transportation Employees. There were 76 valid ballots counted and two challenged ballots.

We will so stipulate.

TRIAL EXAMINER: Do you accept the conditions—

MR. PALMER: Yes, I accept the conditions.

MR. ESTEP: The Union of Transportation Employees will accept the conditions made.

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25 MR. RICHARDS: I do not object to the accuracy of the statement of Mr. Schoolfield and I will join in the stipulation that General Counsel proposes.

TRIAL EXAMINER: Very well.

MR. PALMER: All right, General Counsel proposes to stipulate that on September 17 objections were filed by the Teamsters Union to the first election.

MR. SCHOOLFIELD: My date is September 16, Mr. Palmer. That may have been received in your office on the 17th.

MR. PALMER: All right.

MR. SCHOOLFIELD: Would you prefer to have a copy of the objections in the record?

MR. RICHARDS: We will so stipulate.

MR. ESTEP: The Union of Transportation Employees will so stipulate.

TRIAL EXAMINER: Mr. Richards, do you join in the stipulation?

MR. RICHARDS: Yes, sir.

MR. PALMER: General Counsel proposes to stipulate that on September 21, 1964 the Couch dock and the Red Ball dock were actually merged with operations continuing at the Red Ball dock.

MR. SCHOOLFIELD: On Airline Drive.

26 MR. PALMER: Airline Drive.

MR. SCHOOLFIELD: Airport Drive.

MR. PALMER: Airport Drive.

MR. SCHOOLFIELD: Respondent stipulates that on September 21, 1964, the Abbey Street terminal of Red Ball was closed and the operations there merged in the Red Ball Motor Freight terminal address, Airport Drive in Shreveport on September 21.

TRIAL EXAMINER: Is Mr. Schoolfield's restatement of your stipulation acceptable?

MR. PALMER: Yes, sir.

TRIAL EXAMINER: All right.

MR. ESTEP: The Union of Transportation Employees will agree to that stipulation.

MR. RICHARDS: Charging Party so stipulates.

\* \* \* \* \*

27 MR. PALMER: I withdraw the last proposed stipulation concerning Exhibit 5 and make this new proposed stipulation in regard to General Counsel's Exhibit 5 which is the report on challenged ballots and a notice of hearing on objections which was issued on October 5, 1964.

(The document above-referred to  
was marked General Counsel's  
Exhibit No. 5 for identification.)

MR. SCHOOLFIELD: Respondent will stipulate to the authenticity and has no objection to the admissibility of GC 5.

MR. ESTEP: The Union of Transportation Employees has no objection to General Counsel's Exhibit No. 5 and agrees to its authenticity.

MR. RICHARDS: The Teamsters have no objection.

TRIAL EXAMINER: General Counsel's Exhibit No. 5 will be received.

(The document above-referred to, heretofore marked General Counsel's Exhibit No. 5, was received in evidence.)

MR. PALMER: All right.

28 Now, the hearing on objections in 16-RM-273 was conducted on October 20th, 1964.

MR. SCHOOLFIELD: I will stipulate to that date --

MR. RICHARDS: Actually there were two dates, were there not, October 20 and 21?

TRIAL EXAMINER: Any objections to the stipulation?

MR. ESTEP: The Union of Transportation Employees agrees to the stipulation.

MR. RICHARDS: No objection.

MR. PALMER: The General Counsel proposes to stipulate that as a result of that hearing the Regional Director issued an order on objections which is General Counsel's Exhibit No. 6 on November 10, 1964.

TRIAL EXAMINER: You offer that as General Counsel's Exhibit 6?

MR. PALMER: Yes, sir.

MR. ESTEP: The Union of Transportation Employees with regard to General Counsel's Exhibit No. 6, agrees that it is authentic and will stipulate to nothing else insofar as the contents of that exhibit are concerned.

MR. SCHOOLFIELD: Respondent would agree to the authenticity of GC No. 6 and has no objection to its admission, however, Respondent, as a second thought would like to include with GC 6, the actual objections to conduct affecting election which is not in this record which we feel should go in at this time if the GC has no objection.

29 MR. PALMER: Pardon me.

Exhibit 6 will constitute two documents, 6(a) and 6(b), the objections themselves.

TRIAL EXAMINER: 6(a) will be the Regional Director's decision and —

MR. PALMER: (b) will be the objections themselves.

MR. SCHOOLFIELD: Respondent will stipulate to the authenticity and has no objection to 6(a) and 6(b).

MR. ESTEP: The Union of Transportation Employees has no objection to the introduction of Exhibit 6(b), insuring, however, that the objection insofar as Exhibit 6(a) is considered, as to its contents.

TRIAL EXAMINER: You object to my drawing any conclusions of fact from what may be set forth other than the fact that the objections were filed and the hearing was held and this is what the Regional Director did thereafter.

I assume that is the purpose for which it is being offered.

MR. ESTEP: Yes, that is correct.

MR. RICHARDS: No objection.

TRIAL EXAMINER: 6(a) and 6(b) will be received.

(The documents above-referred to were marked General Counsel's Exhibits Nos. 6(a) and 6(b) for identification and received in evidence.)

30

MR. SCHOOLFIELD: We understand, Mr. Examiner, that they are being offered for all purposes.

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: Back on the record.

MR. PALMER: General Counsel proposes to stipulate that on December 2nd, 1964 the second election was held.

MR. SCHOOLFIELD: Respondent will stipulate.

MR. ESTEP: Union of Transportation Employees will so stipulate.

MR. RICHARDS: So stipulate.

MR. SCHOOLFIELD: Respondent states that the second election was December 2nd and the approximate number of eligible voters was 77, no void ballots, votes cast for the Teamsters 36 and votes cast for the Union of Transportation Employees 38. Votes cast against any labor organization was one. The valid ballots counted was 75 and challenged ballots six. Valid ballots counted plus challenged ballots, 81.

This is on the face of the report of objections to challenged ballots which will be stipulated in next.

TRIAL EXAMINER: That report, as a matter of fact, is already in.

Isn't it included in the formal papers?

MR. PALMER: Yes, sir.

TRIAL EXAMINER: That is GC 1(k).

MR. SCHOOLFIELD: 1(k).

31

TRIAL EXAMINER: In the formal papers.

The stipulation is that the parties agree that the report of the outcome of the election which appears on the face of the report on objections is correct?

MR. SCHOOLFIELD: Yes, so stipulated.

MR. PALMER: So stipulated.

MR. ESTEP: The Union of Transportation Employees so stipulates.

MR. RICHARDS: So stipulated.

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MR. RICHARDS: I would like to give a little bit more detail of the history of the relationship of these parties, if I may, first as to the particular problem here in Shreveport.

32

As was stated in an off-the-record discussion I believe, Red Ball acquired Couch Motor Lines, I think in 1962.

Couch operated from Shreveport and I think I am correct, north and east, basically going from Memphis to New Orleans and this gave Red Ball entry into these particular cities as well as other routes but



up until that time, if I am not mistaken, Shreveport had been the eastern terminus or eastern extremity of Red Ball.

Couch, at the time of its purchase, was operating — its employees were represented by the Teamsters and they were part of the multi-employer Teamster contract.

Red Ball, the balance of its system operating from Shreveport west was represented by the Union of Transportation Employees with one exception which, let me state also — some years ago Red Ball acquired an operation known at that time as Denver-Amarillo Express, if I am not mistaken, operating from Amarillo, Texas northward into Denver. At the time of its acquisition it too had been a Teamster representative company and today remains covered by a Teamster contract so Red Ball, at this point, at the point this arose, had UTE representation in the bulk of its operations which are Texas.

It had Teamster representation from Amarillo downward and with the acquisition of Couch had Teamster representation from Shreveport north and east, I believe and south to New Orleans.

Now— and then they operated here in Shreveport for approximately two years just as if they had never acquired Couch almost.

33 I mean, the old Couch terminal continued to be covered by the Teamster contract and handled freight moving eastward and northward, whereas, the Red Ball terminal covered by the UTE contract and handled freight incoming from the west and from the east, outgoing back west.

In this context then grew up the determination by Red Ball in 1964 to merge the terminals, the problem of handling employees rights that were affected. There were employees working on the old Couch terminal, the Abbey Street terminal covered by the Teamster contract and there were employees operating on the Airport Drive terminal covered by the UTE contract.



On September 21st they integrated the operations by handling all freight in Shreveport at the Airport Drive or Airport terminal and brought over for the first time the Teamsters from the old Abbey Street terminal and put them on the dock with the UTE people and from that much of this has grown. That is part of the background.

\* \* \* \* \*

38 TRIAL EXAMINER: Let me see if I understand your contentions  
39 now.

I haven't looked at the agreement which you have put in evidence but do I understand that under this merger agreement you contend that, pending the outcome of this election, the Teamster contract is to apply to those employees who have been formerly at the Teamster terminal and the UTE contract was to apply to those who had been at the remaining terminal prior to the merger?

MR. PALMER: Yes, I think we can enter into a stipulation to that effect at this time.

TRIAL EXAMINER: Is that in the contract?

MR. SCHOOLFIELD: We have not applied nor do we regard either contract in course or effect from the institution of the consent election agreement back in September 1, 1964.

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42 MR. SCHOOLFIELD: If the Examiner pleases, we would like to state the position of the company in this case, in this matter.

As Mr. Mathews has stated off the record, the purchase of a motor freight line such as Couch with one union representation contract and the merger of that truck line into a father truck line or parent truck line with another union representing the employees and a different type of contract is a tremendous problem to the company.

For some period of time Red Ball operated the Couch System under the Southeast Corporate entity.

After the approval of the merger of Southeast into the Red Ball parent corporation, it became apparent to the company that the operations of two terminals in Shreveport, Louisiana was an economical fiasco.

43       The old Couch terminal on Abbey Street was antiquated, did not have the modern methods of the operation of movement of freight and handling of freight that the Red Ball terminal at Airport Drive had, such as the tow-veyor (phonetics) chain and other methods so on August — or actually, even prior to that time the company had negotiated to talk with both unions about the possibility of some agreeable settlement on the closing of the Abbey Street terminal.

On August 20th, General Counsel's Exhibit 2 was sent to both unions by the General Counsel of the company, Mr. Mathews, in which it was announced that the Abbey Street terminal would be closed on the 15th of September, 1964.

As a result of this letter all parties got together and executed the agreement, General Counsel's Exhibit 3 in evidence, in which without — the agreement will speak for itself but the parties decided to let the Regional Director at Fort Worth hold an election pursuant to the Board's procedures to decide which union would represent the majority of the employees at the consolidated dock.

One unit was agreed upon in this agreement and in the subsequent consent election, the consolidated single unit.

Now, the election was conducted pursuant to the agreement and the consent election agreement on September 10, 1964 with a certain result.

44       It was also agreed in the settlement agreement, GC 2 or GC 3, that the winning union, the certified union would then be the representative of both the Teamster and UTE employees and that contract would apply to all parties.

Well, the election was held on September 10, objections were filed by the Teamsters and the UTE carried the election by two votes.

The challenged ballots were thrown out because there was a stipulated list of voters and pursuant to the objections or the notice of the Regional Director, we had a hearing before a Hearing Officer of the Region, Mr. Joseph Parker, who was an attorney, that went for two days.

Testimony was given and as a result of this an election was set aside, as shown in General Counsel's Exhibit No. 6.

Red Ball, incidentally — the company was exonerated in that report.

Then, the second election was held on December 2nd and the results were approximately the same.

Again, objections were filed.

Actually, the objections went to the same period of time as were covered in the hearing on the first objections.

The General Counsel's Complaint refers to the date of October 6 and two weeks thereafter on the statement of his own theory.

The hearing on the first objections was conducted on October 20 and counsel for the Teamsters Union at that time says that he had know-  
45 ledge of alleged unfair labor practices but he wasn't filing them at that time.

Anyway, we go through this period of time; almost a year has elapsed and Red Ball still has not had this question set.

Red Ball is accused of discrimination in the application of overtime between the two parties.

We will show — Well, to go back, the problem that the company has had first, the company could not recognize either contract as contracts in agreement because of the consent election, however, the company made no unilateral changes until, oh, the Complaint or just prior — when the company was advised that they were going to have this unfair labor practice case, the company then made certain changes that it announced to both parties.

This was on May 17, 1965.

Prior to that the company used the same schedules, the same methods of reporting times and that type of thing and observed the same hours as set forth in the separate and different contracts, that is, that the employees reporting time on the Abbey Street terminal remained the same when the employees came to the Airport terminal.

We did not change any method of treatment of employees pursuant to these agreements but we did not recognize the grievance procedure when we were advised that we were facing another year or year and a half of this terminal.

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We state that the employees in their vote, were voting for the contract that the majority preferred. These employees knew this and this question of discrimination in application of overtime is insane and makes no sense to this Respondent. There is no reason for this type of a charge against us.

The contracts themselves, the continuation of the same circumstances gave one union member at least two hours more straight time than the other union members.

I had--this question, we will demonstrate from the witness stand that this counsel had contact with the other counsel of the Teamsters Union in which I was told that they wanted the Teamsters members to get the same number of hours as everyone else but time and a half after eight instead of time and a half after ten.

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I told this counsel that that would be discrimination against the other union.

The only thing that this company has been able to do was continue in the same fashion as it had before and on May 17 we did offer a grievance and independent arbitration procedure to both unions in order to keep the grievances under control and give the employees the outlet that they should have for the settling of grievances and at that time we did, for the first time, May 17, 1965, change certain work schedules

and reporting time schedules which were actually necessary because of the consolidation and for which grievances have been filed again.

That completes our position. This is no discharges. There has been not a loss of one penny to any man as guaranteed by their old agreement. Everyone has gotten the same money that they would have had under their contract. The take-home pay has not changed. There has been time and a half to the Teamsters and there has been time and a half to the UTE.

The only allegation against us is that we have allotted purposely more time and a half to certain UTE members than to the Teamster members and we can demonstrate that the names in the Complaint leave out six or seven Teamster names in the Complaint. There is only 25 in there and there were 32 Teamster voters.

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TRIAL EXAMINER: \*\*\*

There is just one thing that I want to clarify, Mr. Palmer.

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Mr. Schoolfield stated in his statement that the General Counsel does not base its Complaint on the difference between the eight hours and the ten hours of the discrimination charge with respect to the time for which premium pay was received.

Is that a correct statement?

MR. PALMER: I think that is a correct statement.

TRIAL EXAMINER: In other words, you are not alleging the fact that some employees may have worked regularly ten hours a day while others worked eight?

MR. PALMER: In other words, we don't say--our theory of the case doesn't contend that it was discriminatory to work the UTE employees ten hours at straight time but when they continued to work him after ten hours of premium rate, then that was--did become discriminatory, certainly became discriminatory.

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MR. ESTEP: If the Hearing Officer please, we would like to make certain comments to begin with.

First, we object to the statements made by the counsel for the Teamsters with regard to matters that have nothing to do with the Complaints that have been filed here, about history or other matters that are not supported by cases.

With reference to the objections to the second election that were held, there is nothing in this Complaint to charge the Union of Transportation Employees with any wrong doing and I believe that is the finding of the Regional Director.

Now, with regard to the Complaint that has been filed, all of these matters with regard to any practices made or any activities made on the part of the Union of Transportation Employees prior to the first election were completely litigated during the hearing of October 21st and 22nd and all matters that are contained in this Complaint were made at that time.

We object to any further consideration by the Hearing Officer of that Complaint and we will ask in a motion at the beginning of this hearing that it be dismissed.

54

There has been in the opening statements a matter of overtime.

The Union of Transportation Employees has filed before the Sixteenth Regional Director, Sixteenth Region, a Complaint against Red Ball Motor Freight being Cause No. 16-CA-2345, alleging that the payment of straight time by Red Ball to the Union of Transportation Employees for ten hours rather than eight hours is a discriminatory practice against the Union of Transportation Employees and that matter is on appeal before the General Counsel at this time.

TRIAL EXAMINER: I am sorry but I didn't understand you.

The union has filed a charge?

MR. ESTEP: That is correct. We have filed a charge against Red Ball alleging, in fact, that the payment of straight time for ten hours subsequent to the period that these contracts in legal effect is a dis-



criminary practice on the part of Red Ball and this is made as an opening statement for the purpose of countering Mr. Richards' statement of his discrimination.

There has been overtime pay and we wish there had been more overtime pay because he has tried to keep these contracts on the same basis, that is, one contract calls for the payment of overtime beyond eight hours and the second contract being the UTE contract calls for overtime above ten hours.

55 The use and the factor of continuing this payment at ten hours for your first overtime for the Union of Transportation Employees we feel is discriminatory against us and that matter will be continued to be litigated later on.

Now, with reference to the charge that we are defending and that is the one, the letter that General Counsel has stated will come forward in his presentation, both of these letters are responsive to letters of the counsel for the Teamsters and the letters by the agents of the Teamsters here in Louisiana.

We ask or will ask that the charge against the Union of Transportation Employees and although we are not directly involved in the charge made by the Teamsters against Red Ball, we will also align ourselves in stating if there has been any discrimination made by the use of overtime it has been against the Union of Transportation Employees rather than the Teamsters.

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56 MR. PALMER: Under our theory of the case, under the allegations in this Complaint which we are restricted to, there is no issue-- there cannot conceivably be any issue as to whether these contracts were still in effect.

I don't think that is an issue under any circumstances.

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59

BOYD D. SCRUGGS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. PALMER:

Q. Will you state your name? A. Boyd D. Scruggs.

Q. What is your occupation, Mr. Scruggs? A. President of the Union of Transportation Employees.

Q. The president? A. I am.

Q. Now, Mr. Scruggs, I show you a document that has been marked as General Counsel's Exhibit No. 7 and ask you if you are familiar with this letter that was written by Mr. Estep on September 9, 1964?

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(The document above-referred to was marked General Counsel's Exhibit No. 7 for identification.)

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BY MR. PALMER:

Q. I say, are you familiar with this letter dated September 9, 1964 as written by Mr. Estep? A. Yes, sir.

Q. Yes.

Now, was this letter distributed by your organization to the employees of Red Ball here in Shreveport, Louisiana? A. Yes, sir.

Q. Was it distributed to all employees regardless of whether they were UTE members or Teamster members? A. Yes, sir.

Q. Do you recall whether it was distributed about the date indicated thereon as September 9, 1964? A. On or about that date.

Q. On or about that date? A. Yes, sir.

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Q. Now, I show you General Counsel's Exhibit No. 8. Would you please mark this one?

(The document above-referred to was marked General Counsel's Exhibit No. 8 for identification.)

BY MR. PALMER:

Q. Now, Mr. Scruggs, will you--have you ever seen this document? A. Yes, I have seen it.

Q. Does it have your signature? A. It does.

63

Q. Now, was this document distributed to the Red Ball employees in connection with the campaign in the Representation Case? A. Yes, sir.

Q. And do you recall about when it was distributed? A. Offhand I can't recall the exact date, no, sir.

It was in rebuttal to some Teamster propaganda that had been issued so the date on it I can't positively identify.

Q. Now, was this distributed about or shortly before the second election? A. I would say yes.

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67

# CROSS EXAMINATION

BY MR. ESTEP:

Q. Mr. Scruggs, these letters that you have identified as General Counsel's Exhibits 7 and 8 were made in direct response to letters and propaganda of the Teamsters Union, were they not? A. That is correct.

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MR. PALMER: General Counsel proposes a stipulation to the effect that Exhibit 9, General Counsel's Exhibit No. 9, the letter addressed to all Red Ball dock and city employees, Shreveport, Louisiana on November 27th, 1964 and signed by E. B. Bailey be accepted into evidence and it is stipulated that this was actually distributed to the employees.

MR. MATTHEWS: What is the date of it, Counsel?

MR. PALMER: November 27, 1964.

MR. SCHOOLFIELD: We will stipulate to the authenticity of it but object to the materiality of the exhibit.

MR. RICHARDS: Would you also stipulate that it was distributed to the employees of the Shreveport Red Ball terminal?

MR. SCHOOLFIELD: So stipulate.

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MR. PALMER: All right.

General Counsel Exhibit No. 10 which is the telegram that was sent by Henry English, president of Red Ball Motor Freight to all Shreve-

port city and dock employees, dated December 1st, 1964 which was distributed to the employees or posted on the bulletin board.

MR. SCHOOLFIELD: We will stipulate to the authenticity and that it was posted on the bulletin board.

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MR. PALMER: All right.

Now, General Counsel offers Exhibit No. 11 which is a chart reflecting the ten-week overtime analysis on employees covered by the Teamster contract, employed by Red Ball Motor Freight, Inc., at Shreveport, Louisiana.

MR. MATHEWS: Can we have the dates?

MR. PALMER: It covers a period beginning, week ending October 3rd, 1964 through December 5, week ending December 5, 1964.

MR. SCHOOLFIELD: What does this purport to represent, counsel?

MR. PALMER: This identifies the employer's employees who were subject to or, at least, identified with the Teamster contract and indicates the overtime hours and the overtime pay received during each work week, as identified on the chart.

MR. SCHOOLFIELD: Now, it is a fact, is it not, that this chart does not represent classifications, wage scales, schedules, reporting time, quitting time; any of those matters but just the gross overtime figure on a weekly basis?

73

MR. PALMER: Right.

TRIAL EXAMINER: By overtime you mean time worked for which premium pay or time and a half was paid?

MR. PALMER: Was paid after eight hours.

MR. RICHARDS: The chart shows both the hours and the pay received.

MR. SCHOOLFIELD: The Respondent will agree that GC 11 for identification is a factual compilation of timecards.

We object, if it is being offered in evidence and I assume it is, we object to its admissibility in evidence on the grounds that it does not

show the material factors such as classifications, rates of pay, job duties, job descriptions, hours of work, reporting time, shift schedules and other material factors which we feel are important and necessary in any allegation and on that basis we object to it for materiality, GC 11.

It is nothing but a gross compilation.

TRIAL EXAMINER: I take it that you would stipulate to the accuracy of the information there stated?

MR. SCHOOLFIELD: The accuracy of the chart we will stipulate to, right.

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MR. PALMER: I propose to offer into evidence General Counsel's Exhibit No. 12 which is a ten-week analysis, overtime analysis of employees covered by the UTE contract with regard to Red Ball Motor Freight, Inc., employees at Shreveport, Louisiana, covering two week periods ending October 8th through--

TRIAL EXAMINER: Ending October 8th?

MR. PALMER: Yes, a two-week period, for instance--

TRIAL EXAMINER: The first two-week period ends October 8?

MR. PALMER: Right. Then the two-week period ending October 22nd, the two-week period ending November 5th, the two-week period ending November 19 and the two-week period ending December 3rd, 1964.

I offer it.

MR. SCHOOLFIELD: We have the same agreement as far as the accuracy of the figures as we had on GC 11 for identification and we have the same objection on materiality.

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78

MR. ESTEP: The Union of Transportation Employees will at this time agree, insofar as the accuracy of the figures translated from the timecards on General Counsel's Exhibits 11 and 12 and for that single stipulation only.

TRIAL EXAMINER:\*\*\*

With respect to General Counsel's Exhibit 11, as I understand it,



this exhibit is broken down in weekly periods and the first column under the heading 10-3-64 shows overtime hours worked for each of the employees listed and right next to that, overtime pay which reflects the pay for the number of hours listed immediately before the amount.

MR. SCHOOLFIELD: Yes, I think I understand you, Mr. Examiner. Here are the timecards on the weekly payroll of those employees formerly covered prior to September 1 by the Teamster contract. These cards were analyzed and transcribed as to time and a half hours and amounts on GC 11 by name and amount and hours.

79

Our clocks go on the hundredth, not on the minute.

TRIAL EXAMINER: Therefore, the hours are expressed in decimals?

MR. SCHOOLFIELD: Decimals, that is correct.

MR. MATHEWS: One other thing, Mr. Examiner.

GC No. 11 is on a weekly basis because under the Teamster contract that existed on or prior to September 1, they were paid on a weekly basis and there is a difference when you come to GC 12 respecting the UTE employees. They are paid each two weeks and that is the reason why the dates do not correspond.

TRIAL EXAMINER: That is bi-weekly.

MR. SCHOOLFIELD: GC 12 is bi-weekly.

TRIAL EXAMINER: Now, as I understand it also, each of these exhibits reflect the hours worked and the pay for those hours for the week ending or the two weeks ending with the date above the column but pay, necessarily, however, was not received on the date indicated; the pay period ended.

MR. MATHEWS: That is correct.

TRIAL EXAMINER: Is that correct?

MR. SCHOOLFIELD: That is correct.

TRIAL EXAMINER: So that the two-week period ending October 8th, 1964 which is shown on GC 12 roughly corresponds with the two separate weeks listed on GC 11 ending on October 3rd and October 10th?



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MR. MATHEWS: Well, it is very roughly but that is as near as you can get to it.

TRIAL EXAMINER: Your pay periods for the two weeks end on different days?

MR. MATHEWS: That is correct.

TRIAL EXAMINER: The last two columns of each of these exhibits, I take it, represents the total hours and the total pay for the 10-week period for each employee, is that correct?

MR. MATHEWS: I believe it is the total overtime.

TRIAL EXAMINER: Total overtime.

MR. SCHOOLFIELD: Total overtime and total overtime pay, that is correct.

TRIAL EXAMINER: Now, there are, on GC 11 and I look at a listing opposite the name Dave Debose and I notice the words vacation written in for three of the periods covered. That, I take it, indicates that he did not work at all during that period because he was on vacation?

MR. MATHEWS: That is correct.

TRIAL EXAMINER: There are some similar indications for other employees which have similar meanings?

MR. MATHEWS: On both exhibits, both GC 11 and 12.

TRIAL EXAMINER: On 12 I think the abbreviation v-a-c is used and that represents vacation, is that correct?

MR. MATHEWS: That is correct.

81

TRIAL EXAMINER: Now, also on GC 11 opposite the name C. W. Smiley for the weeks October 10, ending October 10th and October 17th, the words "no time" are written in.

What does that represent?

MR. MATHEWS: May I see it, sir?

TRIAL EXAMINER: Surely.

Off the record for a minute.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

BY TRIAL EXAMINER:

As I understand it from the off-the-record discussion, the entry of zero with respect to any particular employee for any pay period indicated on the exhibits signifies that the employee worked regular time but had no overtime hours worked during the period covered.

MR. MATHEWS: That is correct.

TRIAL EXAMINER: On the other hand the entry of the words "no time" for a particular pay period of a particular employee signified the employee worked neither regular time nor overtime?

MR. MATHEWS: That is correct.

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TRIAL EXAMINER: \*\*\*

82

Do I further understand that all parties are in agreement as to the significance of the entries and headings that I have just described?

MR. MATHEWS: Yes, sir, I am in agreement.

MR. SCHOOLFIELD: I am in agreement.

MR. PALMER: Yes, sir, General Counsel is in agreement.

MR. ESTEP: Yes, sir.

MR. PALMER: I further would like to stipulate that too where it reflects that a Teamster employee had overtime, that he worked eight hours before he received overtime, whereas, on the chart where it shows the UTE employee received overtime--he received ten hours before he received overtime.

MR. MATHEWS: We will so stipulate because that is correct.

There was no overtime on Teamster employees as reflected by GC 11 until after he had worked an eight-hour shift.

The overtime comes after eight hours.

With respect to GC No. 12 which is the UTE employees, there was no overtime until after ten hours in any one shift or day.

TRIAL EXAMINER: Is that satisfactory?

MR. ESTEP: We agree to that stipulation.

MR. RICHARDS: Yes, sir, could we do perhaps one or two more with respect to the exhibit that we talked about off the record and that is, as I understand it, this represents all of the employees that were in the election unit in the sense that this is the classifications represented.

83 These were the city pick-up and delivery men and dock people in Shreveport, both Teamster and UTE, all of them for the period in question, at least, all regular employees

MR. MATHEWS: It does not show their classification. It shows all of the employees that were members of the two different unions who participated in the election but it shows no classification; neither exhibit does. That was one of the basis for our objection

TRIAL EXAMINER: Yes, sir, but as I understand your statement, the list of employees contained in General Counsel's Exhibits 11 and 12, taken together, would constitute all of the employees who were in the bargaining unit for which the election was held during the 10-week period covered, is that correct?

MR. MATHEWS: That is the bargaining unit.

MR. SCHOOLFIELD: It could be more than the qualified or stipulated voters.

TRIAL EXAMINER: I understand that these are the people who, during this period, were in the bargaining unit, is that your understanding?

MR. SCHOOLFIELD: That is correct, yes, sir.

MR. PALMER: General Counsel so stipulates.

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MR. PALMER: All right.

General Counsel proposes to stipulate that GC 13 is the Teamster contract which was in effect on September 1, 1964 with regard to the Teamster employees referred to in these exhibits.

General Counsel's Exhibit No. 14 is the UTE contract which was in force and effect on September 1st, 1964 with regard to the UTE members which are indicated on the chart that we have here in evidence.

86 MR. SCHOOLFIELD: Are you offering them in evidence?

MR. PALMER: Yes, these are offered into evidence at this time.

MR. SCHOOLFIELD: The Respondent agrees to the stipulation and has no objection to the offer of 13 and 14.

MR. ESTEP: Mr. Hearing Officer, the Union of Transportation Employees has no objection except we want it pointed out that there is no stipulation whatever was in legal effect after September 1st, 1964.

TRIAL EXAMINER: You join in the stipulation as to, as proposed by General Counsel?

MR. ESTEP: Yes, we do.

TRIAL EXAMINER: Mr. Richards.

MR. RICHARDS: The Teamsters will join in with the same limitations suggested by Mr. Estep as regards the effect of the contract after September 1.

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E. L. FERRELL

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

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#### DIRECT EXAMINATION

BY MR. PALMER:

Q. Would you state your name, please? A. Edward L. Ferrell.

Q. Are you employed by Red Ball Motor Freight Line? A. I am.

Q. Where are you employed? A. At the Airport Drive terminal.

Q. Airport Drive terminal in Shreveport, Louisiana? A. Yes,

sir.

\* \* \* \* \*

BY MR. PALMER:

Q. All right.

Now, now then, are you a member of the UTE Union? A. I am.

Q. You are a member? A. Yes.

88

Q. All right.

Now, do you recall in before the first election attending any UTE meetings? A. Well, yes, sir.

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Q.\*\*\*

89

Now, do you recall whether or not seniority was discussed at any of these meetings? A. Yes, sir, it was discussed.

Q. All right.

Now, will you identify the meeting that it was discussed at? A. Well, now, the one that it was discussed--oh, I would say the strongest was the last one that I attended. It wasn't exactly a union meeting a kind of a brush up on the coming election. It was, oh, a couple of days before the election, the one they had in the drivers' room, the old drivers' room at the terminal.

Q. All right.

Now, who was present that represented the union? A. Mr. House and Mr. Scruggs.

Q. Now, what is Mr. House's position in the union? A. He is-- he is vice president, I think.

Q. All right.

Now, what was Mr. Scruggs' position? A. Mr. Scruggs is the president.

Q. All right.

Now, during these--The particular meeting that you referred to--you said it was a couple of days before the first election? A. Yes, sir.

90

Q. Now, what was said about the seniority? A. Well, they had two list made up and tacked on the wall of the room.

One list showed the present seniority status of the UTE men and the other one showed the status of the Teamster men. The comparison was--well, on the one list they had the UTE men and their seniority and then below it the Teamster men and their seniority, which the oldest Teamster men was under the youngest UTE men and then on the other

list they had a dovetailed seniority list, starting with the Teamster--the oldest Teamster man and on down to the oldest UTE man and then stacked in.

Q. All right.

Do you recall what was said about their seniority? A. Well, of course, that has been a long time ago but I couldn't remember word for word but they said if we had--if the UTE won the election that the list with the UTE men at the top and the Teamster men under them, that is the one that would be dovetailed.

Q. All right.

Now, do you remember who made the statement, whether it was Mr. House or Mr. Scruggs? A. Mr. House--I mean, Mr. Scruggs was the primary speaker. He made the statement and Mr. House was in agreement with him. He more or less backed him up on how it would go, the information.

91

Q. All right.

Now, do you recall any other things specifically that was said during the discussion by Mr. Scruggs? A. Well, he told us if we wanted to retain our seniority we had better try to get it, you know, carried, have the UTE carry the election. If we lost it our seniority would be dovetailed and some of us would be left out at the bottom.

Q. All right.

Was there anything said during the discussion about a layoff or the possibility of layoff?

\* \* \* \* \*

THE WITNESS: Well, they said that Mr. Bailey had made the statement that the terminal could be run, I think it was about 60 or 61 men and at that time there were something like 75 men eligible to vote and that was going to mean somewhere in the neighborhood of 15 men laid off and of course, that wouldn't have included me but there was quite a few of--I think quite a few of UTE as well as some Teamster men that would have been included because of low seniority.



92

Q. All right.

Now, do you recall attending a meeting at the Holiday Inn? A. Yes, sir, I attended a meeting before the one at the terminal.

Q. All right.

Now, was there anything said about seniority at the Holiday Inn meeting? A. There was something said about it but like I say, it has been a long time ago and I couldn't remember word for word but it all worked around the fact that if we, the UTE lost the election we would be losing a lot of seniority because it would be dovetailed.

Q. All right.

\* \* \* \* \*

#### CROSS EXAMINATION

BY MR. RICHARDS:

Q. Mr. Ferrell, you used the expression in your testimony, dovetailing of seniority, I believe, is that correct? A. Yes, sir.

93

Q. Would you tell us what you mean by dovetailing? A. You have two lists, a list of UTE employees and a list of Teamster employees with the number of years of service by each name. You take the oldest --the one with the most years goes to the top and according to the way it was explained to us, we will say--this may not be exactly accurate, but say our oldest man has 16 years service and say in the Teamsters, I think they had somewhere in the neighborhood of, oh, 15 or 16 men with more service than our oldest man; I will put it that way. They were to come in at the top of the list and then the oldest Red Ball man or UTE man rather and then the next oldest Teamster and then the next UTE and the next Teamster on down the line, according to the years of service.

Q. By dovetailing then you mean the fitting together of the two seniority lists by dates of hire of each employee? A. Yes, that is correct.

Q. Did I understand you to say it was your recollection that there

were 15 or 16 Teamster employees who were older than the oldest UTE employee, is that correct? A. That is correct.

Q. Oldest in point of service, is that correct? A. More years of service.

Q. All right.

Did Mr. Scruggs, if you recall, during either of these meetings, did Mr. Scruggs make any reference to the number or approximate number of Teamster employees who would come in on top of the list? A.

94 It was about 16 of them.

Q. Did he make any such reference during either one of these meetings?

Did Mr. Scruggs say anything to this effect? A. Yes, he told us they had about 16 men who was older than our oldest man.

Q. Did you look-- As I understand it, there were two seniority lists posted on the wall when you had this meeting in the shack or what was it called? A. It was the old drivers' room.

Q. The old drivers' room--there were two seniority lists actually posted on the board, is that right? A. Yes, sir.

Q. And one of the lists was set up to show all of the UTE men at the top with the Teamsters below them, is that correct? A. That is correct.

Q. And the other list was set up on the dovetailing that you described, is that correct? A. Yes, sir, to show what position we would be whichever way it went.

\* \* \* \* \*

95 BY MR. ESTEP:

Q. Mr. Ferrell, you gave a statement to the National Labor Relations Board to Mr. Kahn, did you not, and this was right after the first election was held on September 1st, 1964? A. Yes, sir, that is right.

Q. Correction, September 10th, I believe.

96

In that statement you mentioned this meeting that was held in the drivers' room, did you not? A. Yes, sir.

Q. You didn't make any mention whatsoever of any meeting in the Holiday Inn, did you? A. I don't recall.

\* \* \* \* \*

BY MR. ESTEP:

Q. Mr. Ferrell, you have had an opportunity to refresh your memory with regard to your statement, have you not? A. Yes, sir.

Q. That you gave to the Sixteenth Region Board? A. Yes, sir.

97

Q. I will ask you again, have you made any reference in your statement that you gave in 1964 to the meeting at the Holiday Inn? A. No, I did not.

Q. Is this something new, the first time, that you are coming up with today? A. No.

Q. Was there any particular reason that you left that statement out of the written statement? A. No more than I didn't think it was important.

Q. Now, you have testified about meetings, several of them here.

Can you tell us about the dates of those meetings? A. No, sir, I cannot.

Q. You don't recall when they were? A. No, sir.

Q. Do you recall that they were in the year of '64? A. Yes, sir, I know that.

Q. Is that the best that you can recall about these statements? A. Yes, sir.

Q. These meetings? A. Yes, sir, just regular union meetings. I can't recall the dates.

98

Q. How many meetings did you actually attend, Mr. Ferrell? A. I don't remember.

Q. You don't recall? A. No, sir.

Q. You can't be any more specific than that except that you attended certain meetings in 1964?

You don't know the dates and you don't know the contents of them?

A. That is correct.

Q. Yet you testified here to various conclusions that you do as to, from the statements of Mr. Scruggs, isn't that right? A. I didn't draw any conclusions; I just stated what was said.

Q. But you can't tell us when those meetings were held but you can give us a better idea of what was said?

\* \* \* \* \*

BY MR. ESTEP:

Q. Mr. Ferrell, you have given substantially the same testimony, have you not, in a hearing held before a Hearing Officer in Shreveport during the days of October 20th and 21st, 1964?

If those were the days of the actual hearing you did testify here in this courthouse in a hearing involving the first election? A. That is correct.

99 Q. Did you not? A. Yes, sir.

Q. And you haven't added to those statements in any way, have you? A. No, I haven't.

Q. Now, there were others present at these meetings, were there not? A. Yes, sir.

Q. And in each of these meetings questions were asked from members of the union to Mr. Scruggs and Mr. House, were they not? A. Yes, sir.

Q. All of these statements that were made were primarily made as a result of these questions from persons, is that right? A. Yes.

Q. Isn't it correct that you yourself asked certain questions?

\* \* \* \* \*

TRIAL EXAMINER: \*\*\*

I didn't hear the answer to the previous question which was whether these statements were made in response to questions from members and what was your answer to that?

THE WITNESS: Yes, they were made in response to questions.

100

BY MR. ESTEP:

Q. In most of these meetings there were from four to ten people, at least, was there not? A. Yes, sir.

Q. And you were a member of the group asking these questions?

A. Yes, sir, that is correct.

Q. And in some cases you, yourself, asked questions and in some cases what you heard was the answers to other questions of members of the group? A. Yes, sir.

Q. Now, you made certain statements with regard to seniority, that it was discussed here at these meetings, is that not correct? A. That is correct.

That is what everybody was worried about.

Q. Isn't it a fact that the statements made about seniority were the result of questions asked by members? A. Yes, sir, that is correct.

\* \* \* \* \*

TRIAL EXAMINER:\*\*\*

Mr. Ferrell, you mentioned a statement, I believe, at one of these meetings to the effect that someone said that Mr. Bailey had said there would be a layoff after the merger of the two terminals.

101

THE WITNESS: He didn't say there would definitely be a layoff.

Mr. Scruggs told us that Mr. Bailey had said that the dock could be run with about 60 or 61 men.

TRIAL EXAMINER: Was Mr. Scruggs the person then that made that statement?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Which meeting was this?

THE WITNESS: That particular statement was at the meeting at the terminal driver room just before the election.

TRIAL EXAMINER: Now, you testified as to two seniority lists that were posted in this meeting, is that correct?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: And you identified two groups of employees as the UTE employees and the Teamster employees.

How are those two groups determined on those two lists?

THE WITNESS: One list would be UTE employees at the top, according to their seniority and at the bottom was the Teamster list, according to their seniority.

TRIAL EXAMINER: Well, by UTE employees on these lists do you mean those employees who at that time were working at the Airport Drive terminal?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: And the Teamster employees would be those who at that time were working at the Abbey Street--

102

THE WITNESS: Yes, sir.

TRIAL EXAMINER: To the best of your recollection this is the way the two groups were determined, by location?

THE WITNESS: Let me get these straight.

These two lists were showing which way the seniority list would more likely go with whichever union won the bargaining agreement.

TRIAL EXAMINER: I understand that you had two lists, each of which had the names of all of the employees at both terminals on there but what I wanted to make clear for myself, if possible, was what you mean by UTE employees whose name is on the list and what you mean by Teamster employees whose name is on the list.

THE WITNESS: Well, UTE employees were the Red Ball employees under the UTE unit of members in the UTE Union.

TRIAL EXAMINER: To you does that mean the same thing as all of those who prior to the consolidation were working at Airport Drive?

THE WITNESS: Yes, sir, that is correct.

TRIAL EXAMINER: And the Teamster employees is the same as all of those who prior to the consolidation were working at the Abbey Street?



THE WITNESS: Yes, sir.

\* \* \* \* \*

103 MR. MATHEWS: Mr. Examiner, in view of what you have asked, may I ask him a couple of questions?

TRIAL EXAMINER: Yes.

BY MR. MATHEWS:

Q. Mr. Ferrell, do you recall the Examiner's questions to you regarding the possible layoff of employees?

Do you recall that question? A. Yes, sir.

Q. And you recall your answer? A. Yes, sir.

Q. That was almost a year ago, wasn't it in September of '64?

A. That is correct.

Q. I will ask you if it isn't a fact, there not only hasn't been any layoff of employees at Red Ball out on the Airport Drive but there has been a substantial increase of employees since that time? A. That is correct.

\* \* \* \* \*

104 RECROSS EXAMINATION

BY MR. RICHARDS:

Q. I may be repetitive but I will try not to be, Mr. Examiner.

As I understand there were two lists. Is that all? A. That is correct.

\* \* \* \* \*

105 BY MR. ESTEP:

Q. Mr. Ferrell, I have handed you a transcript of the hearing and your testimony during the days of October 20th and 21st, 1964 and I have underlined certain passages there that you have testified to about negotiations and I would like for you to read those out loud, if you recall making these particular statements, starting at this point right here on Page 135 of the transcript of the hearing, 16-RM-263 held October 20th, 1964 in Shreveport, Louisiana, beginning on Line 6, Page 135 down to Line 9, if you recall making that statement.

\* \* \* \* \*

106

THE WITNESS: Yes, that is right.

\* \* \* \* \*

BY MR. ESTEP:

Q. Then, Mr. Ferrell, you did make the statement, the statement that was made which was something to the effect that Red Ball Motor Freight agreed to bargain with the surviving union after the election, isn't that correct? A. What?

That was in part of the letter that he read to us and as you see, I went on and made the statement, went on to say in other words and then told us.

Q. That was during the meeting at the bunk house, was it not?

A. That is correct.

\* \* \* \* \*

107

Q. Was the word negotiation or bargain used?

\* \* \* \* \*

THE WITNESS: This bargaining power--this bargain that I mentioned here, that Red Ball has said they will bargain with whichever union--

TRIAL EXAMINER: There is an objection pending.

MR. ESTEP: Mr. Hearing Officer, I have made an error here in using the word negotiation. I meant to use the word bargaining and the record does reflect the word bargaining rather than negotiation.

TRIAL EXAMINER: All right, rephrase the question.

108

BY MR. ESTEP:

Q. Isn't it a fact, Mr. Ferrell, that the word bargain was used with respect to Red Ball Motor Freight and a surviving union after the election?

That was your testimony then. A. Yes, sir.

Q. Do you recall making the statement then? A. Yes, sir, Red Ball would bargain with the union that won.

Q. And you were speaking about seniority at that time, were you not?

That is what you meant, seniority? A. That is right.

\* \* \* \* \*

109

BY MR. RICHARDS:

Q. Mr. Ferrell, directing your attention to what is the reported transcript of the hearing of October 20th and 21st here in Shreveport in which you testified and this is your testimony and this is the page to which Mr. Estep referred you in his previous question and I wanted to read the portion to you so that you may either identify it as the question, as the portion Mr. Estep asked you about.

The question was, "All right, just go ahead and tell the Examiner what happened at that meeting."

"Answer: Well, Mr. Scruggs more or less, I guess you would say he was in charge of the meeting. They had two sheets of paper tacked on the wall.

Mr. Scruggs says, boys, I am going to make this short and brief and he said a picture is worth a thousand words and I am going to try to show it to you and draw you a picture of it.

110

He said first, let me briefly read over this mere agreement between Red Ball Motor Freight and the UTE Union and the Teamster Union and he skipped over the first section of it and that was immaterial and I do not remember the exact words of the agreement but it was something to the effect that either Red Ball Motor Freight agreed to bargain with the surviving union after the election and then he went on to tell us, he said, in other words, boys, it means if the UTE wins the election, you boys will have your seniority and will not be disturbed.

"The Teamster boys will come in under the UTE boys.

"He said if the Teamsters win the election, that means that seniority will be dovetailed and you will have former Couch men-- pardon me, 15 former Couch men over your top seniority men at Red Ball."

\* \* \* \* \*

BY MR. RICHARDS:

Q. Is that your testimony here today that that did take place?

111

A. Yes, sir.

\* \* \* \* \*

# JOHN ALTON SALLEY

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. PALMER:

Q. Will you state your name, please? A. John Alton Salley.

Q. Are you an employee of Red Ball Motor Freight, Inc.? A.

Yes, sir.

\* \* \* \* \*

113

Q.\*\*\*

Were there any other UTE--well, now, I forgot to ask you, are you a member of the UTE? A. I am, sir.

\* \* \* \* \*

114

Q\*\*\*

Now, let me ask you, did you attend any of the UTE member

115

meetings prior to the first election? A. Yes, sir.

Q. Now, was seniority discussed at any of these meetings? A.

Yes, sir, it was.

Q. Now, will you tell us when was the first meeting that you went to that seniority was discussed? A. I attended a meeting Sunday, August 30th, at the Alamo Plaza on Market Street and--

Q. All right.

Now, what was said at that meeting about seniority? A. Well, Mr. J. C. House and Dale Scruggs brought up the discussion, the issue on the merging of the two terminals, Couch and Airport Drive terminal over there and he stated that they wanted a raise of hands to see if the

members of the UTE accepted the election for the Teamsters to come in with the UTE.

Q. All right.

Was there anything else said about seniority at that time? A. Yes, sir, he said that Red Ball bought out Couch Motor Lines and it was approved by the Interstate Commerce Commission and stated that if UTE won the election that the Teamsters would go to the bottom of the list.

Q. All right.

Now, did you attend any other meetings of the UTE where seniority was discussed? A. Yes, sir.

Q. All right, tell us where was that meeting, the next meeting?

A. Well, let's see.

We attended the Holiday Inn for a beer bust on September 3rd, I think it was, and he read off the agreement and said that seniority was the main issue that was involved.

He said that if you didn't vote for the UTE that you would be jeopardizing your job.

Q. All right.

Now, did you attend any other meetings where seniority was discussed? A. Yes, sir.

Q. All right, where was that meeting? A. I attended a bunk room meeting in the old drivers' bunk room at the terminal.

Q. All right. A. I believe that was September 8th, if I am not mistaken.

Q. All right.

Now, what was--who conducted the meeting at the bunk room?

A. Mr. Dale Scruggs conducted that meeting.

Q. All right.

Now, what did Mr. Scruggs say at that meeting? A. Well, he had these seniority lists posted on the wall and he brought my attention to it and one of them was the UTE seniority list and the other was the

Teamsters and he showed the two combined where the Teamsters and the UTE members would dovetail and he showed on that list that I was No. 28 on the UTE list and he pointed out that I would be No. 53, approximately, on the dovetailed list and he made the statement that if 15 men approximately were laid off that I might stand a chance of staying on.

\* \* \* \* \*

118 BY MR. PALMER:

Q. All right.

Now, do you recall after the merger a conversation with Red Baker, the dock superintendent? A. I had a couple of conversations with him, sir.

Q. All right.

Now, I have reference to the conversation about October 6. A. Yes.

\* \* \* \* \*

119 MR. PALMER:

Q. Will you please tell us what was said? A. Well, sir, that day in particular on October 6th Mr. Bailey told me to go home that it was my quitting time and as I walked across the line, he called me back and said no, go ahead and work.

He said the next two weeks prior to the hearing we are going to let the UTE men get all of the overtime they want.

I think I continued working overtime, not every day, I don't think, but for the next two weeks prior to the hearing I worked overtime.

Besides that, my checker and the man I was breaking out with was kept on sometimes and I was sent home and sometimes I didn't--

\* \* \* \* \*

#### CROSS EXAMINATION

\* \* \* \* \*

120 BY MR. RICHARDS:

Q. Do you recall before this meeting with Mr. Baker on October 6



that there was a meeting on the dock in which, I think, Mr. Bailey spoke and I think perhaps Mr. Smith and Mr. Schoolfield were present?

Do you recall when that meeting took place? A. That was on October 2nd, sir. It was at approximately 9:00 a.m.

121 Q. Now, this was about two weeks after the dock had been or the two terminals had been merged, is that correct? A. Approximately, yes, sir.

Q. Did any question come up during that meeting with respect to how the contracts were going to be applied with respect to payment of overtime? A. Yes, sir, he said that they would apply to the contracts.

Q. Who is he, Mr. Bailey or who? A. Mr. Hugh Smith made the statement and he issued a three-page written, typewritten statement and he read to us on the dock and he said that the contract would apply as it did before the election on September 10th.

Q. Do you recall whether or not anybody--was the question of overtime discussed at all, if you recall, in this connection? A. Yes, sir, Raymond Iles and W. J. King, I don't know which one, but I think it was Raymond Iles was asking Mr. Hugh Smith the question of how overtime would be paid.

Mr. Hugh Smith answered applicable agreement.

Q. Applicable agreement, is that correct? A. Yes, sir.

Q. You place this on or about, I think, October 2nd, is that correct? A. Yes, sir, correct.

Q. '64?

122 A. 1964. \* \* \* \*

123 BY MR. RICHARDS:

Q. Directing your attention now back to that period of time after around October 2nd, do you recall specifically any persons who were voicing complaints in your presence about this announced company's intention or the company's announced intention on the payment of overtime? A. Yes, sir, I do.

Q. Now, give us some of the names of the persons that you heard.

A. All right, W. J. King. After the election he was pretty mad at the outcome of the statement Mr. Hugh Smith said and he made the statement to Henry Simmons and Henry Simmons told it to me after the election--

MR. ESTEP: We object, Your Honor, this is hearsay.

TRIAL EXAMINER: Yes.

MR. RICHARDS: Do you want the witness excused?

TRIAL EXAMINER: No, he can just step to the back.

MR. RICHARDS: All right, would you please just step back here.

(Witness out.)

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

(Witness in.)

TRIAL EXAMINER: I will sustain the objection at this time.

124

BY MR. RICHARDS:

Q. All right.

Now, if you recall, Mr. Salley, I was asking you whether you heard fellow employees voicing any complaint about the fact that Teamsters were going to get time and a half after eight hours.

Do you recall hearing any employees, your fellow employees making such complaints in the presence of Red Baker or Mr. Bailey or any other company supervisor?

Do you recall or not, yes or no? A. In front of the other supervisors?

Q. Yes, in front of a supervisor? A. I don't remember.

Q.\*\*\*

Do you remember fellow employees, people like yourself, UTE members complaining to one another about the fact that Teamsters were going to get time and a half after eight? A. Yes, sir.

MR. RICHARDS: Now, it is this area, as I understand it, that the Examiner is going to sustain an objection.

I would offer to prove to this witness that at or around October 2nd, 1964 and shortly thereafter that there were frequent complaints voiced around the dock by employees, fellow employees who were UTE members, about the fact that the Teamsters were going to get time and a half for all hours over eight, whereas, they were going to get it only after ten.

125 I understand that you have sustained the objection to that testimony, is that correct?

TRIAL EXAMINER: As I understood, there was an objection raised and I have sustained it.

MR. RICHARDS: May I let it stand as an offer of proof?

TRIAL EXAMINER: Well, do you object to the offer?

MR. SCHOOLFIELD: It wasn't my objection.

MR. ESTEP: It was my objection.

TRIAL EXAMINER: I will reject the offer of proof.

\* \* \* \* \*

128 BY MR. ESTOP:

Q. Mr. Salley, you have given testimony before about the statements that were made at these meetings during October 20th and 21st, 1964, have you not? A. I don't recall the 20th and 21st.

Q. Do you recall making any testimony before a Hearing Officer of the National Labor Relations Board in regard to an election held in September of 1964 on the Red Ball dock? A. You mean at a hearing?

129 Q. Yes, sir. A. October 20th I did, yeah.

Q. You did so testify? A. October 20th there was a hearing.

Q. Mr. Salley, do you recall being asked a question at that time, "You understand that in voting in that election, you were voting to determine which contract of the two different unions that the employees on the Red dock would be working under," and your answer was at that time, "Whichever won I guess."

Do you recall that? A. No, sir, I don't.

MR. PALMER: Well, pardon me.

The witness has the right to refresh his memory from the transcript.

MR. PALMER: Do you want to refresh your memory?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Let the record show that Mr. Estep has shown the witness the transcript or a portion of the transcript of his testimony.

BY MR. ESTEP:

Q. Mr. Salley, I will ask you again now that you have had an opportunity to examine your testimony given on October 20, 1964, do you recall giving that answer to that particular question that I just previously read to you? A. Yes, sir.

\* \* \* \* \*

131 Q. Isn't it a fact that you, after interceding for you by Mr. House that you were put back to work as a truck driver? A. I said I never was fired.

Q. You were never discharged? A. I was on vacation when they called me in the hearing for blowing out a tire.

Q. What was--who called you in?

\* \* \* \* \*

A. Mr. Bailey

Q. He is terminal manager, is he not? A. He is.

132 Q. What did he do to you as a result of your blowing out the tire? A. He permanently grounded me.

Q. What is that? A. That means that I can't drive.

Q. That puts you in a position of a non-driver, is that right?

A. Correct.

Q. Is it not a fact that thereafter Mr. House interceded for you and that you were put back as a driver? A. No, he interceded for me but I wasn't put back as a driver.

\* \* \* \* \*

135 BY MR. ESTEP:\*\*\*

Q. Now, do you recall the meeting at the Holiday Inn? A. Which one?

Q. How many were there? A. Two that I know of.

went on regular March 2nd, '64.

Q. March of 1964.

All right.

Now, was you a UTE employee or a Teamster employee? A. I belong to the Teamsters.

Q. You belong to the Teamsters? A. Yes, sir.

Q. In other words, you worked over at the Couch dock before it was merged? A. Yes, sir.

Q. Now, after the merger what were your hours of work?

When did you start to work? A. After the merger?

Q. Yes. A. 10:00 o'clock in the morning until 6:30 in the afternoon.

Q. And you got off at 6:30 in the afternoon? A. Yes, sir, unless I worked overtime.

Q. Now, what was your occupation?

What was your classification? A. Driver.

139 Q. You was a driver? A. Yes, sir.

Q. As a driver, what did you do when you first came to work in the morning? A. That will vary from day to day.

Q. All right, generally, tell us what various things you would do? A. If there is loads to go out, I am usually sent immediately out with a load.

Q. All right.

Now, if there wasn't a load, what would you do? A. Normally I would go pull off the line loading trailers out.

Q. You would work on the line and pull trailers out, is that right?

What does that mean? A. Pulling off the line and loading trailers out.

Q. Loading trailers out? A. Yes, sir.

Q. All right.

Then if there was a load, a delivery for you to make then, would you make any pick ups? A. Possibly.

Q. You possibly could make some pick ups? A. Yes, sir.

Q. How many did you attend? A. I attended two of them.

Q. How many people were there at those hearings or meetings rather? A. Approximately five or ten, at least.

\* \* \* \* \*

136 Q. Well, let's take the first meeting at the Holiday Inn. A. That was at the beer bust, September 3rd.

Q. If that is the first one that you attended. A. I believe that is the first one I attended.

Q. All right.

\* \* \* \* \*

BY MR. ESTEP:

Q. What do you recall as to answers to questions made from either yourself or from anyone else at the meeting, the first meeting at the Holiday Inn? A. Well, the main issue was when Mr. Dale Scruggs asked about the seniority issue.

137 Q. Who asked the question, Mr. Salley? A. Mr. Scruggs did, answered it--you mean asked it?

Q. I will ask you what answers were made by Mr. Scruggs or Mr. House to questions made by you or anyone else in these meetings.

A. I just told you that seniority issue was the biggest question.

\* \* \* \* \*

ROBERT E. MAY

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

BY MR. PALMER:

138 Q. Mr. May, have you ever worked for Red Ball Motor Freight?

A. Have I worked for Red Ball?

Q. Yes. A. I am working for Red Ball now, sir.

Q. All right.

Now, how long have you been working for Red Ball? A. Well, I



140

Q. Then would you come back during the day or would you be out all day until the end of your working day? A. Well, as soon as you get unloaded, you call in and see what is next, whether to come back in or go somewhere, drop a trailer or go somewhere and make a pick up.

Q. All right.

Now, if you came back in what would you do then? A. Well, normally, if you bring an empty trailer back in, you put it on the empty line.

If you bring a loaded trailer in you put it on the loaded line and drop your tractor, put it on the ready line and then I go back to the line and start pulling off because there is always work there.

I don't have to ask anybody what they want me to do; I know what to do there.

Q. All right.

Now, would you unload your own trailer or would someone else unload your trailer when you bring it in? A. When you bring it in?

Q. Yes, when you come back in? A. Coming in with a loaded trailer you can possibly put it on the loaded line as a load ready to pull out or it can go into the dock and you might unload it or anyone can unload it.

Q. All right. Fine.

Are you a trailer man or a bobtail man or both? A. I am both,  
141 I guess.

Q. Now, are your duties different if you are working as a bobtail man or as a trailer man? A. Yes, sir.

Q. To what extent are they different? A. Well, a bobtail man has a certain route of town usually that he makes and a trailer man is liable to go anywhere.

Q. All right.

Now, when you get off at 6:30 are there any other Teamster men that get off at the same time you do? A. Yes, sir.

Q. And who are those men? A. Phillip Thompson, Gus Rachel, Nash, and that is all I recall.

Q. All right.

Those are the Teamster men that get off at the same time? A.

Yes, sir.

Q. Are there any UTE men that get off at the same time you do?

A. Yes, sir.

Q. Do you know who they are? A. I know some of them. I don't know whether I recall all or not.

Q. Will you tell us the ones that you do recall? A. John Guice, Red Hamilton and O'Daniel, I believe gets off at the same time I do.

142 Q. Do you know Mr. Graves? A. Yes, sir.

Q. Did he get off at 6:30, the same time as you do? A. I believe that he does, sir.

Q. I think you mentioned Mr. Guice? A. Mr. Guice.

Q. Mr. O'Daniel? A. Yes, sir.

Q. Do you remember a Mr. Garrett? A. Bobby Garrett.

Q. And Anderson? A. Bill Anderson gets off at the same time, I believe.

Q. And are these men drivers or do you remember what their classifications are, these UTE men? A. They are all bobtail drivers.

Q. They are bobtail drivers? A. Yes, sir.

Q. All right.

Now-- A. Pardon me, Graves is a trailer man.

Q. Graves is a trailer man? A. Yes, sir.

Q. And the others are bobtail drivers? A. Yes, sir.

143 Q. What is your rate of pay per hour as of the time of the merger?

A. I believe it was three fourteen, I believe then.

Q. You think yours was three fourteen at that time? A. Yes, sir.

MR. MATHEWS: By that you mean \$3.14 per hour?

THE WITNESS: Yes, sir.

BY MR. PALMER:

Q. Did you attend any UTE meetings prior to the second election?

A. Yes, sir.

\* \* \* \* \*

BY MR. PALMER:

Q. All right, was there anything said about seniority? A. Yes, sir.

144 Q. All right.

Now, what was said? A. I can't recall which one it was. It was either Bill Giles or Jerry King asked Mr. Scruggs to clarify it or discuss for the benefit of the Teamster members that were present and Mr. Scruggs told us all that it would be negotiated and that he would stand up for his men which is understandable.

Q. Was there anything else added to that statement? A. Well, there was a lot of discussion but that was about what it amounted to.

\* \* \* \* \*

Q.\*\*\*

Now, after the merger how much overtime did you receive, I mean, in the way generally, how many hours did you work?

\* BY MR. PALMER: \* \* \*

145 Q. All right, during the first week or two, do you recall what the condition was with regard to overtime you worked at the new dock?  
A. We were making overtime.

Q. About how many hours a day do you recall did you make?

A. I don't recall; I would guess 30 minutes to an hour a day anyway.

Q. All right.

Now, after the first two weeks of the merger did you have any conversation with any supervisors of the company about whether you should continue to work overtime? A. After the first two weeks they told me to clock out and I clocked out.

\* \* \* \* \*

147 Q. Do you recall any statements that they made in regard to the overtime? A. I don't--I am not much for one for overtime and when they told me to go, I didn't argue.

I just never have cared much for overtime.

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## CROSS EXAMINATION

BY MR. RICHARDS:

Q. I will try not to be repetitive, Mr. May.

I think you testified that there were other persons, Teamsters, that got off about the same time that you did, Mr. Thompson, Mr. Rachel and Mr. Nash, is that correct? A. Yes, sir.

Q. Are they drivers? A. They are bobtail drivers.

Q. They all three regularly run the bobtails, is that correct?

A. Yes, sir.

148 Q. Do I understand that you drive, depending upon the assignment from day to day, a bobtail trailer or do you more frequently drive trailers? A. It is more frequently trailers.

Q. Now, I would like to do a bit more, if I may, in the area that General Counsel did, just in terms of general duties, if I may.

I think you said typically when you come to work, you report at 8:00, is that correct? A. 10:00 o'clock.

Q. 10:00 o'clock, I am sorry.

If you have a load to take out then to be delivered around the city, you would do that the first thing, is that correct, I mean, if there is a load to be delivered? A. There is three or four trailer men that comes on at 10:00 o'clock, UTE and Teamsters combined and either one of the three or four can go out with two or three loads or if there is enough loads there, all of us go out.

Q. Now, these are full trailer loads? A. No, sir.

Q. They are not? A. No, sir.

149 Q. What is-- A. That can be a full load or they can be one large shipment on a trailer that the only thing that is left on the trailer after it has been unloaded or it can be a shipment right on the tail end that is in the way and it is much more economical to carry it out than unload it on the dock and rehandle it.

Q. All right.

Did you identify the other trailer men? I think perhaps you said Mr. Graves was a trailer man. A. No, he comes on earlier than I do.

Q. I am sorry. A. He gets off at the same time.

Q. Now, if there is a situation where there is not a trailer to be taken out, I think you said you pull off the line, is that correct? A. Yes, sir.

Q. What do you mean by that, pull off the line?

What is the line? A. The freight is unloaded onto buggies, four-wheel buggies that are hooked into a chain that circles the dock and that is the line.

Q. And the line is in-- A. That is commonly called the line.

Q. This circular chain that pulls them around the dock? A. Yes, sir.

Q. And you say the freight--this is the freight that came in the night before, is that correct? A. That is freight that has come in on the bobtails or the trailers, being unloaded off the trailers.

150 Q. And by pulling off the line, you mean you pull off one of the little-- A. Four-wheel buggies<sup>1</sup>--

Q. --four-wheel buggies and they will have a sheet of paper on them that is coded to show where they go, is that correct? A. There is a plate on the front of the buggies that gives the trailer destination and number.

Q. All right. A. The number of the trailer.

Q. And by that you would know what--what would you do, begin to load that freight to that dolly and then to an outgoing bobtail trailer? A. An outgoing trailer.

Q. All right.

Now, in the evening time, what time are you typically back on the dock in the evening?

Are you there by 5:00 o'clock in the afternoon or around 5:00 or earlier or later? A. I could be back there any time.

Q. If you get back on the dock around 5:00 or 5:30, what would you typically do? A. 5:00 or 5:30, I would either be pulling off the line or unloading bobtail, loading on the line.

Q. This would really be-- A. Or could possibly be out hooking up tractors under trailers.

151 Q. And this is part of your regular duties, is that correct or regular work, is that right? A. Pulling off the line and unloading bobtails, yes, sir.

Q. Is this true of these other drivers you have named who get off at the same time you do?

Do they do the same sort of work that you do when they get in?

A. The trailer drivers?

Q. The trailer and bobtails, will they pull off the line and load out and that sort of thing too? A. Generally, the bobtail drivers unload the bobtails primarily.

Q. Would this be their own bobtail or just any bobtail? A. Any bobtail.

Q. Now, once they have completed their driving for the day and picked up their freight around town and are back at the dock they would, as I understand it, actually handle the freight, either pulling it out of the bobtail-- A. Yes, sir--

Q. --or off the line? A. Yes, sir.

Q. This is the regular pattern, is that correct? A. Yes, sir.

Q. What time typically, if you know, do the bobtail drivers get back to the dock?

152 Are they back by 6:00 o'clock? A. The bobtail drivers?

Q. Uh-huh. A. The largest majority of them coming back in any volume will be between 5:00 o'clock and 5:20.

Q. This is when the bulk of them come in? A. There is others that can come in earlier and some much later.

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BY MR. SCHOOLFIELD:

Q. Mr. May, you testified that you didn't care too much for over-time beyond your eight hours, is that correct? A. That is right, sir.

Q. And you made this known to your supervision when you were on the Abbey Street dock, did you not, sir? A. I don't recall any specific time but I believe I did, sir.

Q. But you think you did, is that right? A. I think I did, yes, sir.

\* \* \* \* \*

Q. Isn't it a fact that other employees out there feel the same way you do about overtime? A. There is others, yes, sir.

\* \* \* \* \*

Q. All right.

Now, is it a fact that on the Red Ball dock that overtime work is mostly on a voluntary basis if there is work available? A. That is a hard question to answer.

Q. Did anybody ever--Go ahead. A. Used to, it was more or less voluntary but now it is more or less expected of us. We are running pretty short on men.

Q. When you run short of men it is expected? A. I think so.

Q. But there are other men who want to do it, no man is forced to do it, is that right? A. I don't think you would call it forced.

Q. So, it is kind of a voluntary thing, isn't it? A. More or less.

Q. Now, isn't it also true, Mr. May, the use or need for overtime varies from day to day and by the work load and the volume of freight? A. Yes, sir.

154 Q. And the volume of freight is never the same from one day to the next, it can vary quite a bit from day to day, is that correct? A. Yes, sir.

Q. And that is what governs the use of overtime, isn't that right? A. I would think so.

Q. Now, Mr. May, on this delivery of freight on the bobtails and in your trailers, isn't it true that your bobtail drivers and city drivers

are more difficult to govern or handle on overtime than the dock men because they are out in the city, out in the areas? A. To some extent but not a very large per cent, I don't think.

Q. It is true that your dock men are right there on the dock and they can be punched out? A. Yes, sir.

Q. But sometimes your city delivery men like you are caught out after your eight hours and get a little overtime, isn't that correct? A. Well, that is largely up to the dispatcher. I mean, he can get you back to the dock.

A bobtail man now--I am referring to a trailer driver.

I would think that a bobtail man would be harder to get back in.

\* \* \* \* \*

156

TRIAL EXAMINER:\*\*\*

Would you tell me what a bobtail is?

Is that a non-trailer truck?

THE WITNESS: A bobtail is your small city delivery, I would say, a single-axle truck.

There is no trailer behind it.

TRIAL EXAMINER: I see.

Tell me--I think you testified that you worked some overtime in the two weeks after the merger of these two docks.

THE WITNESS: Yes, sir.

TRIAL EXAMINER: If you recall tell us what kind of work you did on overtime during that period?

THE WITNESS: The same work that we do on regular time.

TRIAL EXAMINER: Well, were you delivering, driving a truck or working around the dock?

THE WITNESS: At that time of day we were on the dock.

TRIAL EXAMINER: Do you recall that the overtime that you put in during that period was on the dock?

THE WITNESS: I am sure that it was but I don't recall.

At that time of day it would normally be on the dock.

\* \* \* \* \*

157

## REDIRECT EXAMINATION

BY MR. PALMER:

Q. In your prior testimony on direct you listed the names of the UTE drivers who got off at the same that you did at 6:30.

Now, what time did they start to work? A. As a trailer driver or--

Q. The drivers that got off at the same time you did. A. They would start at 8:00 o'clock.

Q. They would start at 8:00 o'clock?

Is that two hours prior to the time that you started work? A. Yes, sir.

Q. All right.

Now, let me ask you this.

The overtime that was worked prior to the second election, prior to December 2nd, was that overtime worked on the dock or would it be driving?

158

TRIAL EXAMINER: Are you referring to the overtime that the witness worked?

MR. PALMER: Yes, that the witness worked.

THE WITNESS: Any overtime that you make after 6:30 is almost always on the dock.

Of course, now, you could be out on a trip but I don't recall being out anywhere.

BY MR. PALMER:

Q. All right.

\* \* \* \* \*

Q. Do you--does the same thing apply to the UTE drivers who get off at the same time you do? A. Yes, sir.

\* \* \* \* \*

## RECROSS EXAMINATION

BY MR. RICHARDS:\*\*\*

159 Q. Mr. May, I think you just got through testifying that any overtime you typically would have worked after 6:30 in the evening would have been on the dock, is that correct? A. Yes, sir.

\* \* \* \* \*

Q. What is your testimony with respect to any overtime they would have put in after 6:30? Would it have typically been on the dock or would it have typically been out driving in town?

160 MR. MATHEWS: If he knows, Mr. Examiner.

THE WITNESS: It would be on the dock.

BY MR. RICHARDS:

Q. On the dock? A. Yes, sir.

Q. What is your procedure in the evening time when it gets 6:30? Are you told to punch out, do you ask permission to punch out or do you punch out automatically or does it vary? A. It varies.

Q. You have testified that someone and you were unable to identify who it was, told you to hit the clock or clock out back there in October of 1964; do you recall that testimony? A. Yes, sir.

Q. Do you mean this has happened on one occasion or did it happen each time at the end of 6:30, when you get through with your work day or what was it? A. Normally it happens most every day.

If he wants you to go home at 6:30, then he throws up his hand and tells you bye.

Q. Someone tells you this typically, is that right? A. Normally, yes, sir.

Q. If they want you to stay on past 6:30, they would do the same, is that correct? A. They don't always tell us. We just keep working until they tell us to go.

161 Q. You mean you stay on and keep working until someone tells you to go? A. I do, yes, sir.

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TRIAL EXAMINER: Mr. May, prior to this period you indicated you were told to punch out at 6:30, had you been told to punch out at 6:30 on other occasions as well?

THE WITNESS: I don't exactly get your meaning.

TRIAL EXAMINER: Well, let's go back.

I think you testified that at one specific time you were told to punch out at 6:30 and thereafter; do I understand that correctly?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: What happened before that at 6:30?

THE WITNESS: Well, the first two weeks everyone worked overtime.

TRIAL EXAMINER: Were you asked to work overtime every day for the first two weeks?

THE WITNESS: They more or less left it up to us. If you wanted to make it it was there and I was under the impression that they needed help so I stayed some.

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TRIAL EXAMINER: Well, what happened at the end of your shift over at Abbey Street?

THE WITNESS: I would clock out.

TRIAL EXAMINER: Were you told to do so?

THE WITNESS: Sometime.

In other words, at the end of my shift I am going to clock out when I can.

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163

#### FURTHER REDIRECT EXAMINATION

BY MR. PALMER:

Q. When you are working--when you was working overtime, would you be work--you said you were working on the dock--would you be working shoulder to shoulder with UTE men? A. Yes, sir.

164

Room 409,  
United States Post Office and  
Federal Building  
Shreveport, Louisiana,  
Wednesday, July 14, 1965.

\* \* \* \* \*

166

C. W. SMILEY

was called as a witness by and on behalf of the General Counsel and,  
having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

\* \* \* \* \*

170

Q. (By Mr. Palmer) All right.

Now, do you know Red Baker? A. I do.

Q. What is his title? A. As far as I know, he is Dock Superintendent.

Q. All right.

Now, did you have any conversation or hear any statement made by Mr. Baker concerning overtime? A. Yes, I did.

\* \* \* \* \*

171

Q. (By Mr. Palmer) To the best of your recollection, Mr. Smiley, when was it with relation to the end of this two-week period after the merger of the docks? A. It was during the period of the two weeks that we were merged and after that I did hear Red Baker say but—

Q. All right.

Now, go ahead and tell us what— A. That the UTE men— that he was going to see that the UTE men got all of the overtime they wanted for a period of two weeks, referring to the two that we had got overtime. He was going to see that the UTE men got overtime also.

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173

## CROSS EXAMINATION

\* \* \* \* \*

Q. (By Mr. Schoolfield) Now, have you yourself said anything to any of Red Ball's Supervision on the equalization of hours or the desire for more overtime? A. I think it was plainly stated due to my injury I don't care for any overtime.



Q. Then you yourself did not want overtime, is that correct?

A. Correct, because of my injury.

\* \* \* \* \*

176 Q. (By Mr. Schoolfield) Now, Mr. Smiley, it is a fact, is it not,  
that the only problem some of your Teamster Friends or ex Couch Termi-  
nal Employees who formerly worked under the Teamster Contract had was  
177 the eight and ten that the UTE Men worked, isn't that a fact?

\* \* \* \* \*

A. That seems to me like that would be hearsay and I couldn't  
give you a direct answer.

That is hearsay passed down from one man to another. It would be  
rumors.

Q. Then it is your testimony that you have no idea or knowledge  
direct or indirect of any dispute or problem on hours on the dock after  
the consolidation, isn't it?

Isn't that your testimony? A. No.

Q. Well, what do you know about it; tell us? A. In plain words  
there are some that wants overtime and some don't want overtime.

Q. Fine. Now, tell us the some that want it and the some that  
don't? A. Those names I can't recall.

\* \* \* \* \*

#### 184 RECROSS-EXAMINATION

Q. (By Mr. Schoolfield) Mr. Smiley, you testified that you over-  
heard Mr. Red Baker make some type of statement on overtime.

What day of the month was that, do you know? A. All I can say  
is that the date slips my memory.

Q. Now, you remember when the consolidation took place? It  
has been stipulated as September 21.

185 Was it three weeks after that, four weeks after that or when?

A. It was approximately two weeks.

Q. Approximately two weeks after that.

Now, Mr. Smiley, in the statement that you gave the investigator of the Labor Board, you place that date as October 6, 1964.

\* \* \* \* \*

A. Are you referring to the date that Red Baker made the statement?

Q. Yes, sir. It is on Page 2 of your statement. A. I have here October 6th, 1964.

\* \* \* \* \*

186 Q. All right.

Mr. Smiley—

Mr. Trial Examiner, I would like to point to the exhibit, General Counsel's 11 and also the timecards which show definitely that Mr. Smiley was not working the week beginning October 5th for that two-week period.

\* \* \* \* \*

187 Q. Did not work at the terminal at all, isn't that a fact? A. Two weeks after the merger?

Q. No, four weeks after the merger, starting two weeks after, for the next two-week period. A. That, I can't recall whether I did or whether I didn't. That has been back there sometime ago.

Q. Whatever your timecard reflects would be the fact on that, would it not? A. I imagine that it would.

\* \* \* \* \*

TRIAL EXAMINER: Mr. Smiley, can you tell us, was there anybody else present at the time of this statement by Mr. Baker that you have testified about?

THE WITNESS: The only ones that I know would be John Salley and Leo Ainsworth.

TRIAL EXAMINER: Now, was there a conversation which surrounded this statement or does the statement stand by itself?

THE WITNESS: Well, he spoke very plainly when he made the statement. Now, whether or not, sir, a conversation was held to that effect, I could not say because I was trying to do my work and I wasn't trying to start in a conflict.

188 TRIAL EXAMINER: Do you recall whether anything was said to Mr. Baker before he made the statement or after by any one of the people you have named?

THE WITNESS: I don't recall, no, sir.

TRIAL EXAMINER: I wonder if you could tell me, to the best of your recollection, what it was that Mr. Baker said?

THE WITNESS: What I heard him say was, by God, he was going to see that the UTE men got all of the overtime they wanted.

He had walked out of his office and was saying—that was when he made that statement.

TRIAL EXAMINER: Was that the extent of his statement?

THE WITNESS: That was the extent of what I heard.

TRIAL EXAMINER: Did you or Mr. Salley or Mr. Ainsworth say anything in response to it?

THE WITNESS: They may have been something said but the exact words, I don't know.

TRIAL EXAMINER: I have no other questions.

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195

### E. O. AINSWORTH

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

Q. (By Mr. Palmer) Would you state your name, please?

A. E. O. Ainsworth.

Q. Have you ever worked for Red Ball Motor Freight? A. Yes, sir, I have.

Q. How long did you work for Red Ball? A. January 1st, 1952.

Q. All right.

Now, are you a Teamster employee? A. Yes, I am.

Q. And you worked over at the old Couch dock? A. Yes, sir.

Q. Prior to the merger? A. Yes, sir.

Q. Now, what—do you remember the merger on September 21st, 1964? A. Yes, sir.

Q. What was your classification at that time? A. Checker.

196 Q. A checker? A. Yes.

Q. Now, when you transferred over to the new dock, what were your duties?

What work did you perform? A. Well, insofar as all of it, I would check a little, break out a little, pull off of the line, drive a fork lift.

MR. SCHOOLFIELD: Drive what, Mr. Ainsworth?

THE WITNESS: A tow motor.

MR. SCHOOLFIELD: A tow motor.

Q. (By Mr. Palmer) All right.

Now, then your work was primarily, it was on the dock, is that correct? A. Yes, sir.

Q. It was on the dock.

All right.

Now, but your classification was checker? A. Yes, sir.

Q. Now, what do you mean when you said you worked on the line? What did you do? A. I pulled buggies off the line and stacked freight in the trailer.

Q. All right. What does it mean when you said you checked some?

197 What does that mean?

What did you do? A. Well, Webb Brown and I load the locals out, that is our first—

TRIAL EXAMINER: Speak up, please.

THE WITNESS: When we get the locals loaded up, I pull off the line some and then Martin comes on at 7:00 o'clock and sometime I check until he gets there.

Q. (By Mr. Palmer) All right.

Now, what—after the merger what time did you go to work? A. 3:00 o'clock in the morning.

Q. 3:00 o'clock in the morning? A. Yes, sir.

Q. What time did you normally get off? A. 11:30.

Q. That was your— A. That was my bid shift.

Q. That was your bid shift, all right.

Now, what do you mean by your bid shift? A. Well, they post the bids every so often and we go according to seniority bid on a job.

Q. When you bid on it, the bid indicates what time you start and what time you get off, is that correct? A. Yes, sir.

Q. All right.

198 Now, were there any other Teamsters that got off at the same time you did? A. Yes, sir.

Q. Who were they? A. W. E. Salley.

Q. All right. A. Webb Brown—

MR. MATHEWS: Who, Mr. Ainsworth? I didn't hear you.

THE WITNESS: W. E. Salley and Webb Brown.

Q. (By Mr. Palmer) Do you know of any other checker—do you recall any other checker that got off? A. No, sir.

Q. Do you know of Dave Debose? A. Yes, sir, that is right, Dave was on then.

Q. Did they start at the same time you did? A. Yes, sir.

Q. And do you know what Brown's classification was? A. Checker.

Q. He was a checker.

Do you know what Debose's classification was? A. Dock.

Q. He is a dock man.

Now, what does a dock man do? A. Well, he usually pulls off the line.

Q. He usually pulls off the line? A. Yes, sir.

199 Q. Are there any other jobs that he might do? A. He could break out.

Q. He could break out and is there anything else that he could do?  
A. No, sir.

Q. All right.

Were there any UTE employees that got off at the same time you did? A. No, sir.

Q. You don't recall any UTE employees getting off? A. No, sir, they worked 10 hours and we go to work—at the time we started they went to work at 2:00 and we was going at 3:00 and that would throw them to get off an hour after we would get off. They worked 10 hours.

Q. All right.

Now, were there any UTE employees that started to work earlier than you did that got off at the same time you did? A. No, sir.

Q. You don't recall any? A. No.

\* \* \* \* \*

Q. (By Mr. Palmer) Now, for the first two weeks after the merger did you receive any overtime? A. Yes, sir.

200 Q. Will you explain to the Trial Examiner how much overtime you received for the first two weeks? A. Around two hours a day.

Q. Around two hours a day? A. Yes, sir.

Q. Now, was there a change of policy by the company after that first two weeks? A. Yes, sir.

Q. All right.

Now, did anybody explain the change in policy to you? A. Well, it wasn't explained. Mr. Harley Brown was the dock foreman then and he told me when my eight hours was up to go home.

\* \* \* \* \*

Q. All right.

Now,—were there any meetings on the dock where they explained—  
A. The onliest meetings that I remember on the dock was December 2nd with Mr. Bailey and a couple of lawyers down there.



Q. All right.

201 Now, what happened at that meeting? A. Well, there was a little commotion about whether we was going to get time and a half after eight hours and I believe, best I remember, Mr. Bailey was asked and he said they would have to abide by the contract.

Q. All right.

Now, what date did you establish that meeting on? A. December 2nd.

Q. Well, pardon me.

Are you sure it wasn't September of 1964 instead of December or October, pardon me?

The merger was September 21st and then two weeks later would be October 1964. A. Wait a minute. Maybe I am crossed up.

MR. MATHEWS: Counsel, I will stipulate with you that it was October 2nd and I can understand how the witness would be confused on that.

MR. PALMER: Yes. O.K. There is a stipulation that this meeting was October 2nd, 1964.

THE WITNESS: I don't know why I said December.

MR. PALMER: O.K.

Q. (By Mr. Palmer) Now, after that did you hear any statement made about overtime?

Do you know Mr. Baker? A. Yes, sir.

202 Q. What is Mr. Baker's occupation? A. He is dock foreman, superintendent.

Q. Dock superintendent.

Now, as dock superintendent who is he in charge of? A. Well, I would say the rest of the dock foremen.

Q. He is in charge of the dock foremen that are there, all right. Now, after the October 2nd meeting did you hear Mr. Baker make any comment about overtime? A. I did.

199 Q. Are there any other jobs that he might do? A. He could break out.

Q. He could break out and is there anything else that he could do?  
A. No, sir.

Q. All right.

Were there any UTE employees that got off at the same time you did? A. No, sir.

Q. You don't recall any UTE employees getting off? A. No, sir, they worked 10 hours and we go to work—at the time we started they went to work at 2:00 and we was going at 3:00 and that would throw them to get off an hour after we would get off. They worked 10 hours.

Q. All right.

Now, were there any UTE employees that started to work earlier than you did that got off at the same time you did? A. No, sir.

Q. You don't recall any? A. No.

\* \* \* \* \*

Q. (By Mr. Palmer) Now, for the first two weeks after the merger did you receive any overtime? A. Yes, sir.

200 Q. Will you explain to the Trial Examiner how much overtime you received for the first two weeks? A. Around two hours a day.

Q. Around two hours a day? A. Yes, sir.

Q. Now, was there a change of policy by the company after that first two weeks? A. Yes, sir.

Q. All right.

Now, did anybody explain the change in policy to you? A. Well, it wasn't explained. Mr. Harley Brown was the dock foreman then and he told me when my eight hours was up to go home.

\* \* \* \* \*

Q. All right.

Now,—were there any meetings on the dock where they explained—  
A. The onliest meetings that I remember on the dock was December 2nd with Mr. Bailey and a couple of lawyers down there.

Q. All right.

201 Now, what happened at that meeting? A. Well, there was a little commotion about whether we was going to get time and a half after eight hours and I believe, best I remember, Mr. Bailey was asked and he said they would have to abide by the contract.

Q. All right.

Now, what date did you establish that meeting on? A. December 2nd.

Q. Well, pardon me.

Are you sure it wasn't September of 1964 instead of December or October, pardon me?

The merger was September 21st and then two weeks later would be October 1964. A. Wait a minute. Maybe I am crossed up.

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THE WITNESS: I don't know why I said December.

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Q. (By Mr. Palmer) Now, after that did you hear any statement made about overtime?

Do you know Mr. Baker? A. Yes, sir.

202 Q. What is Mr. Baker's occupation? A. He is dock foreman, superintendent.

Q. Dock superintendent.

Now, as dock superintendent who is he in charge of? A. Well, I would say the rest of the dock foremen.

Q. He is in charge of the dock foremen that are there, all right. Now, after the October 2nd meeting did you hear Mr. Baker make any comment about overtime? A. I did.

Q. All right.

What did he say? A. On October 6 he said for the next two weeks he would see that all of the UTE men got all of the overtime that they wanted.

Q. All right.

Now, where did that occur? A. He was in front of the time clock.

Q. Where was you at the time? A. I was breaking out for Mr. Salley, to the left of the time clock.

\* \* \* \* \*

MR. SCHOOLFIELD: Was that all of the overtime they wanted for the next two weeks?

THE WITNESS: Yes, sir.

203 Q. (By Mr. Palmer) Let me ask you another question. Did you do any Saturday work over at the old dock before you made the transfer?  
A. Both Saturdays—the first two weeks, both Saturdays.

Q. You worked two Saturdays then at the new dock? A. Yes, sir.

Q. Now, did you do any Saturday work after the first two weeks?

A. No, sir, I haven't done any since.

\* \* \* \* \*

204

#### CROSS-EXAMINATION

Q. (By Mr. Schoolfield) Mr. Ainsworth, do you recall any circumstances surrounding Mr. Baker's statement? Was anyone asking you questions or was anybody around him at the time— A. No, sir.

Q. Did you have knowledge of any complaints of employees with reference to the differential between the eight and tenth hour of some employees. A. Yes, sir.

Q. Isn't it a fact that about this period of time the problem on the dock was that one group was getting overtime after eight and another group was getting overtime after ten hours of work; wasn't that the problem on the dock? A. With UTE, yes, sir.

\* \* \* \* \*

Q. And isn't it a fact that as far as you are concerned and the rest of the men at the Couch terminal, overtime was a penalty or a not too desired work schedule, isn't that right, sir? A. The majority of the

205

men wants overtime.

Q. The majority of them did at Couch? A. If they could, yes, sir.

Q. Now, did you ever ask for overtime? A. Not at Red Ball.

Q. You never have asked for it? A. No, sir.

Q. Have you ever turned it down when it was offered to you?

A. No, sir.

Q. Never said that you wanted to go home or anything like that?

A. No, sir.

Q. All right.

Now, to go back to Mr. Baker's statement, who was he talking to when he made that statement? A. No one.

Q. He was just standing by the time clock shouting it out? A. He just more or less made the statement. He wasn't standing exactly by the time clock.

Q. Who was he talking to? A. He was talking to no one.

Q. Isn't it a fact that around this time the Teamster steward, Bud Giddens filed a grivenace on this eight and ten hour differential?

A. Yes, sir.

206

Q. Isn't it a fact that that grievance was to attempt to equalize the hours for all hours? A. No, sir.

Q. What was the purpose of the grievance? A. To get our equal share of overtime.

Q. To get your equal share of the overtime? A. Yes, sir.

\* \* \* \* \*

Q. Now, when Mr. Baker made this remark what other employees were around? A. Well, possibly John Groves. He was standing close enough and Joiner—

207

Q. Joiner, Marvin Joiner? A. Yes, sir.

Q. All right, who else? A. W. E. Salley could possibly hear it.

He is a Teamster.

Q. All right. A. Outside of them three I don't know. That is about all.

Q. Is that all you saw standing around? A. Yes.

Q. All right. Now— A. I seen Salley where Joiner and Groves check. I didn't particularly notice if they were around but if they was working, they was around because they stand right in the checking stand.

Q. In other words, their work station is right close by? A. Yes, sir.

Q. Now, which Salley are you talking about; you know that there are two out there? A. Long tall Salley.

Q. Long tall Salley, is that W. E. Salley? A. Right.

Q. W. E. Salley was from the Couch terminal? A. That is right. I said it is possible that he could have heard it, if he had been paying attention.

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Q. (By Mr. Estep) Mr. Ainsworth, I believe you identified your statement as being on October 6th, is that correct? A. Yes, sir.

Q. You were sitting in this hearing room a moment ago and overheard the statements of Mr. C. W. Smiley? Do you recall Mr. Smiley being on that dock on October 6th? A. No, sir.

210

Q. Was he even at work that day, as far as you know? A. As far as I know, he wasn't.

Q. Was not? A. Was not.

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#### REDIRECT EXAMINATION

Q. (By Mr. Palmer) On direct examination you referred to a meeting on October 2nd when there was conversation about discontinuing overtime, is that correct? A. Well, it was brought up, yes, sir.



Q. Yes.

All right.

211 Now, did any UTE men ask Mr. Bailey or the company officials any question about how overtime would be applied? A. Well, the best I remember it was either Raymond Iles or King asked Mr. Bailey plain if we would draw overtime for all over eight hours and Mr. Bailey said he would have to abide by the contract.

\* \* \* \* \*

215 BY MR. RICHARDS:

Q. Mr. Ainsworth, I am handing you a document that is marked as CP 2. It is stapled together with some other documents and I am not going to remove it. I am asking you about only this particular piece and subsequently I am going to sever it from the other documents.

I will ask you to take a look at the front and the back of it and see if that is the grievance that you earlier testified you had signed with respect to the overtime matter and see if this is the one or resembles the one that you signed? A. This Springhill run is the one that is not on the other one.

Q. Is that your signature on the back? A. Yes, sir.

\* \* \* \* \*

217 MR. MATHEWS:\*\*\*

Can we stipulate, as I stated earlier, regarding the instrument marked as Respondent's No. 1 and the one which you had marked for identification as CP 2?

MR. RICHARDS: If I understand your request was that the language beginning "Since September 21st, 1964" and running down for a full paragraph through "settlement of this grievance"--

MR. MATHEWS: Correct--

MR. RICHARDS: --is identical on both CP 2 and Respondent 1 and we will so stipulate.

MR. MATHEWS: And that they are otherwise in every respect identical with the exception that the exhibit of CP 2 contains a statement

"Also, Springhill runs are being pulled by UTE covered employees, and these have always been pulled by Teamsters", is that not correct?

MR. RICHARDS: That is not quite correct because there is additional language appearing on CP 2 further "pulling of Springhill runs in accordance with seniority" that does not appear on CP 1.

MR. MATHEWS: That is correct.

218 MR. RICHARDS: And of course, on the back of the other is the signatures.

MR. MATHEWS: Right but other than that they are identical, is that not correct?

Will you so stipulate?

MR. RICHARDS: I so stipulate.

TRIAL EXAMINER: I take it that that stipulation includes the fact that CP 2 has signatures on the back and Respondent's 1 does not?

MR. MATHEWS: That is correct.

\* \* \* \* \*

219 MR. ESTEP: We will stipulate to the stipulation heretofore set out by counsel.

TRIAL EXAMINER: With respect to the two exhibits?

MR. ESTEP: With respect to Exhibits CP 2 and Respondent's Company 1.

MR. PALMER: The General Counsel joins in that stipulation.

\* \* \* \* \*

Whereupon,

DEWITT TURNER

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

\* \* \* \* \*

BY MR. PALMER:

Q. Are you an employee of Red Ball Motor Freight?

220 A. I is.

\* \* \* \* \*

Q. All right.

Now, was you a Teamster employee or a UTE employee? A. A  
Teamster.

\* \* \* \* \*

222 Q. Now, let me ask you this.

What time did you start to work? A. Now, you ask me a question  
--I really don't know. I goes to work at 2:00 o'clock.

223 Q. Now, after the merger then last September do you remember,  
did you go to work at 2:00 o'clock at that time? A. Yes, sir, I  
been on the 2:00 o'clock shift every morning.

Q. Is that the morning or the afternoon? A. 2:00 o'clock at  
night. I gets up at 2:00 o'clock in the morning and goes to work at 2:00  
o'clock.

Q. All right.

Now, what time do you get off? A. Well, most of the time, it is  
10:30.

Q. 10:30 in the morning? A. Yes, sir.

\* \* \* \* \*

224 TRIAL EXAMINER: And at that time right after you first started  
to work out there, do you recall any other people who reported to work  
at the same time you did?

THE WITNESS: I was the onliest man over on Abbey that went to  
work over there at that time.

TRIAL EXAMINER: At 2:00 o'clock?

225 THE WITNESS: Yes, sir, and when they changed it they put some  
of them on the 2:00 o'clock shift with me.

TRIAL EXAMINER: I see.

MR. MATHEWS: So the record is made clear, the change that he  
is talking about, Mr. Examiner, I believe is May 17th of this year, is  
that not correct, Mr. Turner?

THE WITNESS: That is pretty close to it, as near as I can get it,  
yes, sir, when we made the change.

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## CROSS EXAMINATION

BY MR. RICHARDS:

Q. Mr. Turner, when you are working on the dock, how do you know when to go home?

When do you go home or call it quits? A. Mr. Baker will come out and give me that and that means hit that clock and leave off and I don't ask no questions about getting off until he waves us bye.

MR. RICHARDS: Can the record reflect that the witness is waving his hand up and down and saying that Mr. Baker gives him that? May the record so reflect?

BY MR. RICHARDS:

Q. You work up until you get that signal? A. Yes, sir.

Q. Now, do you know a dock foreman there at the terminal named Tilleax? A. Yes, sir.

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BY MR. RICHARDS:

Q. All right, if you will now, turning your attention then to the conversation with Mr. Tilleax.

If you will, will you tell me what Mr. Tilleax said to you? A. He asked me--he said would you like to make more money. He say if you were UTE you could carry home thirty something dollars more than what you are making so I didn't--he asked me how much was I making now a hour and I say, well, I really don't know and that is the way I left it.

229

So, he figured it up and he say, well, I can tell you what you are making so I just kept stacking freight because I wasn't paying too much attention because I was watching what I was doing. I just kept stacking my freight because I don't want to damage no freight because it may be something that I can't use. I just kept on paying attention to what I was doing and so he say well, you can carry home thirty something dollars more and that will buy a lot of beer. That is the way he told it so he

left and walked on out of the trailer so that is that.

\* \* \* \*

BY MR. SCHOOLFIELD:

\* \* \* \*

230 Q. All right.

Now, when Mr. Tilleax was talking with you in the trailer isn't it a fact that he was explaining the difference between the eight and the ten hours straight time worked between the two contracts? A. That is the way I see it.

Q. That is what he was doing? A. Yes, sir.

Q. He didn't talk to you about any overtime? A. He didn't say nothing about overtime. He just said if I go UT I make more money to carry home.

\* \* \* \*

231 Whereupon,

DAVE DEBOSE

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

# DIRECT EXAMINATION

BY MR. PALMER:

Q. Would you state your name, please? A. Dave Debose.

Q. How do you spell it? A. D-e-b-o-s-e.

Q. Now, have--are you an employee--do you work for Red Ball Motor Freight? A. I do.

\* \* \* \*

235 BY MR. RICHARDS:

Q. Can you tell me, as best you recall, what conversation you had with Mr. Tilleax at that time, what he said to you and what you said to him, if anything? A. Well, he came in the truck where I was and he asked me how much I make an hour and I told him three oh nine and he asked me, said, you are sure and I said, I am pretty positive.

He said wait a minute, I will be back in a few minutes, somebody called him.

He come back and he figured up and he said if you was a UT man  
 you could take home approximately thirty or thirty-five dollars a week  
 236 than what you are taking now.

He said if I was you what I would do is think it over before the  
 election.

\* \* \* \* \*

# JOSEPH FULLER

was called as a witness by and on behalf of the General Counsel, and  
 having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. PALMER:

Q. State your name, please. A. Joseph Fuller.

Q. And you are an employee of Red Ball Motor Freight? A. Yes,  
 sir.

\* \* \* \* \*

237 Q. What kind of work did you do after you moved to the new dock?  
 A. Dock hand.

Q. You are a dock hand? A. Yes, sir.

Q. What do you do as a dock hand? A. Load trailers.

Q. You load trailers? A. Yes, sir.

Q. All right.

Now, what time did you start to work after you moved to the new  
 dock? A. 11:00 o'clock.

238 Q. Now, is that 11:00 in the morning or 11:00 at night? A. 11:00  
 in the morning.

Q. 11:00 in the morning? A. Yes, sir.

Q. Then what time do you get off? A. 7:30.

Q. 7:30.

Are there--did you say--did you testify that you are a Teamster  
 man or a UTE man? A. I am a Teamster.

\* \* \* \* \*



## CROSS EXAMINATION

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BY MR. RICHARDS:

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Q. Now, are you--you are loading outbound freight, is that what you are doing? A. Yes, sir.

Q. That is freight, that for the most part, got picked up during the day here in Shreveport, is that correct? A. Yes, sir.

Q. Do, if you know, what time do the city pick-up trucks and bob-tails get into the dock in the evening? A. Around 5:00 to 6:00 o'clock, they be coming in.

Q. Most all of them are in by 6:00 o'clock? A. Just about.

Q. What do those drivers do as you see them when they get back to the dock in the evening? A. They start unloading their pick-ups until they finish over there.

Q. Then do some of them come over there and work with you loading? A. Yes, sir, they comes over on the other side where I is unloading.

241

Q. And do loading along with you? A. Yes, sir.

Q. Do you know a Red Baker? A. Yes, sir.

Q. He is the dock foreman or dock supervisor? A. Yes.

\* \* \* \* \*

Q. Did you have a conversation with Mr. Baker around the time of the second NLRB election?

242

A. Yes, sir, I did.

Q. Can you tell me about when it was? A. Well, it was in about the second week we was over there and they came into the truck, he asked me, he said, how would you like to make more money and I said, oh, yes, sir I would like to make that overtime.

Q. Was anything else said other than that? A. He walks out.

\* \* \* \* \*

TRIAL EXAMINER: Mr. Fuller, at the time Mr. Baker came into the truck and spoke to you that you just told us about, did either Mr. Baker

or you say anything further than what you have already said?

THE WITNESS: I don't understand.

TRIAL EXAMINER: Did either you or Mr. Baker say anything in addition to what you have already told us?

THE WITNESS: No, sir.

TRIAL EXAMINER: That was the full extent?

THE WITNESS: Full extent.

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243

### CURTIS STEWART

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

### DIRECT EXAMINATION

BY MR. PALMER:

Q. Would you state your name, please? A. Curtis Stewart.

Q. And you are an employee of Red Ball Motor Freight? A. Yes, sir.

Q. Was you a Teamster employee or a UTE employee? A. Teamster.

\* \* \* \* \*

Q. And when you came over to the new dock, what was your job, your classification? A. Driver, pick-up driver.

Q. Now, what time did you start to work? A. 8:30.

244

Q. You started to work at 8:30? A. Yes, sir.

Q. What time did you get off? A. Due off at 5:00 o'clock, approximately 5:10 or 5:15; that is what it would amount to.

Q. Now, I am talking about back at the time of the merger. What time did you get off? A. 5:30.

We were getting an hour for lunch.

Q. You got an hour for lunch and you got off at 5:30? A. 5:30.

Q. Now, was there any other Teamster drivers that got off at the same time you did? A. Two.

Q. Who are they? A. Mr. John Lasyone and Otis Debose. Those were the three of us going to work at the same time.

Q. All right.

Now, do you know what their classification was? A. Pick-up driver.

Q. Pick-up drivers? A. Yes, sir.

Q. All right.

Now, were there any UTE employees that got off at that time, at that same time?

245 A. Not that I recall, sir.

Nobody got off with us.

\* \* \* \* \*

Q. All right.

Now, you stated that you recall when you first started to work at the new dock in September 21, 1964.

Now, what was the situation with regard to overtime when you first started to work over there? A. The first two weeks I worked overtime and the first week I worked that Saturday.

Q. All right. A. I was scheduled to work that Friday afternoon on the second, I was scheduled to work that Saturday.

246 Q. All right.

Now, what happened with regard to that Saturday work? A. That Friday afternoon when I came in I told Mr. Brown, I said, I will see you tomorrow, like that.

He said no, don't come down in the morning, no more overtime.

Q. Now, who is Mr. Brown? A. He was the dock foreman at that time.

Q. Do you know what his first name is? A. Mr. Harley Brown.

Q. Mr. Harley Brown? A. Yes, sir.

Q. Then after that occasion what was the policy on overtime?

A. I didn't get any more, sir, unless I be caught out and get a few minutes, that is all.

Q. O. K.

The only time you received overtime was when you got caught out?

A. Yes, sir.

Q. All right.

Now, during the first two weeks when you received overtime, what time did you usually get in from your run? A. That I received in the first two weeks?

247 Q. Yes, sir. A. I would say about a quarter till 6:00 or no later than 6:00 o'clock or something, you know, between--it was sometime 5:15. It just all depends on where I am, sir.

Q. It all depends on where you was? A. Yes, sir.

\* \* \* \*

Q. Do you do any work on the dock at all in addition to driving?

248 A. During that time?

Q. Yes, during that time. A. Well, the first two weeks I did, yes, sir.

Q. To what extent did you work on the dock? A. Sometime he would let me work a bobtail and then sometime I would pull off the line, loading out.

Q. All right.

That would be in addition to loading, to the loading of your own truck which occurred in the morning? A. Yes, sir.

Q. O. K.

\* \* \* \*

251

# RECROSS EXAMINATION

BY MR. RICHARDS:

Q. After October 2nd, 1964 was there any change with respect to what you were told to do when you came in from your pick-up run?

Were you told to punch out or were you told to work on the dock

252 or was there any change before and after October 2nd? A. I didn't get to work any more, I mean, there was always a rush to get in and get off, that is what he told me.

Q. By get off, what do you mean? A. Get off the clock.

Q. Get off the clock? A. Yes.

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253

# BUD GIDDENS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. PALMER:

Q. Will you state your name, please? A. Bud Giddens.

Q. Are you an employee of Red Ball Motor Freight? A. Yes, I am.

Q. How long have you been an employee? A. It will soon be nine years.

Q. About nine years, all right.

Now, are you a UTE employee or a Teamster employee? A. Teamster.

Q. Teamster? A. Yes, sir.

Q. In other words, you was working at the old Couch dock before the merger? A. Yes, sir.

Q. Do you recall the merger? A. Yes, sir.

Q. On September 21st, 1964? A. Yes, sir.

Q. Do you hold a position, some kind of job with the union?

254

A. I am a job steward.

Q. You are a job steward, all right.

Now, after the merger what was your classification? A. Driver.

Q. A driver? A. Yes, sir.

Q. Is that--is that what you call your bid classification? A. Yes, sir, yes, sir.

Q. Now, what did you do--what was your work--what was your job?  
A. Well, when I would go in he would give me bills on a load going somewhere and I would take it and deliver it.

Q. All right.

Now, did you do anything besides driving on the dock? A. Well, if there wasn't a truck to drive, I would work on the dock.

Q. What kind of work would you do on the dock? A. Pull off the line most of the time.

Q. Pull off the line most of the time? A. Yes, sir.

Q. Would you do anything else besides pull off the line? A. Well, sometime maybe go out and back a trailer in or something like that when I was there on the lot.

Q. All right.

255 Now, when you pulled off the line what did that--what did you do when you pulled off the line? A. Just pulling it out and loading it in the outbound trucks.

Q. In other words, take the freight off the line and put it in an outbound truck? A. In the truck, yes, sir.

Q. All right.

Now, after the merger what time did you start to work? A. 8:00 o'clock.

Q. At 8:00 o'clock in the morning or the evening? A. Morning.

Q. In the morning? A. Yes, sir.

Q. Were there any other Teamster employees that started to work at the same time you did? A. One.

Q. What was his name? A. Leroy Hicks.

Q. Leroy Hicks and what was his classification? A. He was a driver.

Q. All right.

Now, as a driver, what did he do? A. He did about the same thing that I did.

Q. He did the same thing? A. Yes, sir.

256 Q. In addition to driving he would work on the dock, if it was necessary? A. Yes, sir.

Q. All right.



Now, did you testify as to when you got off?

What time did you get off? A. At 4:30.

Q. 4:30? A. Yes, sir.

Q. Did Mr. Hicks get off about the same time you did? A. Yes, sir.

Q. What, if you know, were there any UTE drivers or employees that got off at the same time that you and Mr. Hicks did? A. There were two.

Q. What were their names? A. Loyd Green and Buck Lofton.

Q. Loyd Green and Buck Lofton.

What are their classifications? A. They were drivers too.

Q. All right.

Do you know what their bid classification is with regard to sometime the UTE has classification of checker-driver or do you have knowledge of that? A. No, sir, I don't.

257 Q. You don't know? A. No, sir.

Q. All right.

Now, do you know what time they would get to work? A. Well, I wasn't there but they were supposed to start at 6:00, I understand.

Q. All right.

Now, the first two weeks that you worked at the new dock what was the situation with regard to overtime? A. Well, the first week I was on a vacation and the second week I got about all of the time that I wanted.

Q. All right.

Now, what happened with regard to overtime after the first week that you worked and the second week? A. Well, I understand that they had some meetings on the dock on the 2nd of October but I wasn't in either one of them.

Q. You wasn't at either of those meetings? A. No, sir.

They said overtime was going to be cut out and after that I wouldn't get but very little.

TRIAL EXAMINER: After that you didn't get what?

THE WITNESS: Very little overtime.

BY MR. PALMER:

Q. All right, that was the next question I was going to ask you.

258 What--was there any change in the policy of overtime then after the first week after you came back to work? A. Mine was cut out.

Q. Your overtime was cut out, all right.

Now, did you have knowledge of these two UTE drivers that continued to work after you did, to an extent? A. Yes, sir.

Q. Did you actually see them? A. Well, most of the days they would still be working when I was told to punch out.

Q. All right.

Now, where would they be working? A. Most of the time they would be on the dock. Sometime they would be out on a truck.

Q. All right.

Now, who--how did you know when to leave? A. I was told to go home.

Q. Who told you? A. Some of the dock foremen.

Q. Was it always the same dock foreman? A. Not every time, no, sir.

There was Red Baker, Jack Brandon, Harley Brown and some of the three would see, as a general rule, that I got off at 4:30.

Q. Do you know who determined who got the overtime? A. I don't understand that question.

259 Q. If you know, which foreman or supervisor was actually the fellow that made the decision as to which employee received overtime? A. I would presume it was the dock foreman because we wasn't getting any.

MR. PALMER: No further questions.

MR. RICHARDS: I may have a couple.

#### CROSS EXAMINATION

BY MR. RICHARDS:

Q. Mr. Giddens, you were driving a bobtail truck mainly, would

that be right? A. A trailer most of the time.

Q. As I understand it, Mr. Lofton and Mr. Green did basically the same type work that you did, is that correct? A. Yes, sir.

Q. Do I understand that there were times after October 2nd that you were sent home at the end of your eight hours when either Mr. Lofton or Mr. Green remained on the dock working? A. Yes, sir.

Q. Did this happen on more than one occasion? A. Yes, sir.

\* \* \* \* \*

260

BY MR. SCHOOLFIELD:

Q. Now, Mr. Giddens, you testified that sometime Mr. Lofton and Mr. Green were on the dock working when you left and sometime they were out on a run when you left, out in the trucks, didn't you? A. Right.

\* \* \* \* \*

Q. Would it be two or three times a week? A. I wouldn't even say.

I know sometimes they wasn't there to punch out when I did and sometimes they was.

Q. And you don't know how many times either one occurred?

A. You mean being out on the truck?

Q. Yes. A. No.

Q. You don't know how many times they were on the dock when you left?

261

A. There were several days on the dock that they would be working but now, the exact number of days, I wouldn't say.

Q. There were several days when they were out on runs too, weren't there? A. Yes, sir.

\* \* \* \* \*

BY MR. ESTEP:

Q. I believe you made the statement that during the second week after the merger at the Airport Drive terminal that you got all of the overtime that you wanted? A. I said about.

Q. How much is about how much you wanted? How much is that?

A. I would generally take all they would give me.

I got more overtime that week though, I would imagine, than I have got ever since up to here lately.

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268

# PHILIP THOMPSON

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. PALMER:

Q. Would you state your name, please? A. Philip Thompson.

Q. Are you an employee of Red Ball Motor Freight? A. Yes.

Q. About how long have you been working for the Company?

A. Since August 30th of '59.

Q. All right.

Are you a Teamster employee or a UTE employee? A. A Teamster.

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269

Q. And when you started working after the new dock, what was your classification? A. Pickup driver.

Q. All right.

Now, what did you do as a pickup driver?

What did you do the first thing when you came to work in the morning? A. Well, the first thing is load the truck out for the route and then go deliver.

Q. All right.

Now, did you come back in anytime during the day? A. I would usually get back in about 2:00 or 2:30 and eat lunch.

Q. Now then, what did you do after you came in? A. Well, I would eat lunch and either load some more freight or starting picking up.

Q. All right.

Now, did you do any work around the dock? A. During the lunch period, I mean, when I come back in?

Q. Anytime during the day? A. In the evenings after we get in, yes.

Q. What type work did you do? A. Well, we would--after we check in we would unload our trucks or either pull off the line, load trailers, just whatever needed done.

270

Q. All right.

Now, what time did you start to work after the merger?

What time did you start to work? A. 10:00 in the morning.

Q. At 10:00 o'clock in the morning? A. Yes, sir.

Q. What time did you get off? A. Oh,--now, my time that I am due off?

Q. Yes, sir. A. 6:30.

Q. At 6:30? A. Yes.

Q. Would that allow for any time for lunch? A. A thirty minute lunch period.

Q. A thirty minute lunch period? A. Uh-huh.

Q. All right.

Were there any Teamster employees that came on at the same time you did? A. Yes.

Q. Who were they? A. Teamster employees?

Q. Yes. A. Well, Rachel, May and Nash and I believe that is all.

271

Q. Do you remember Philip Thompson? A. That is me.

Q. Pardon me.

MR. SCHOOLFIELD: We will stipulate that.

BY MR. PALMER:

Q. All right.

Now, May, Nash and Rachel, what were their classifications?

A. Well, Rachel and Nash are pickup drivers like myself and May now, he is classified as a sixwheel pickup and checker, I believe.

Q. All right.

Now, did they start to work then at the same time you did? A. Yes, sir.

Q. Now, do you know whether any UTE employees got off at the same time you did? A. Yes, sir.

Q. And who were those employees? A. Let me think. There is Hamilton, Anderson, Garrett, O'Daniel, Graves and I believe that is all.

Q. Did you know Guice? Yes, Guice. That was another one.

Q. Now, do you know what their classifications was? A. Pickup drivers.

Q. They were pickup drivers?

272

A. Uh-huh.

Q. Do you know what time they started to work? A. 8:00 a.m.

Q. At 8:00 a.m.? A. Uh-huh.

Q. Now, during the first two weeks after the merger did you work at the new dock? A. Yes, sir.

Q. And what was the policy with regard to overtime during the first two weeks that you worked at the new dock after the merger?

A. Well, the first two weeks we were there we worked oh, ten hours a day.

Q. All right.

Now, approximately how much of that would be overtime? A. Well, all over 40 which--

Q. All over eight hours? A. All over eight hours a day.

Q. All right.

Now, what was--what type of work did you usually do during the overtime hours? A. Well, being due off at 6:30, the balance of two hours would be either unloading or loading. It would be dock work.

Q. It would be dock work? A. Yes, sir.

273

Q. All right.

After the first two weeks then what was the policy? A. Well, after the first two weeks we went back to eight hours a day.



Q. All right.

Do you know Brown? A. Which Brown?

Q. That was a supervisor? A. Yes, Harley Brown.

Q. Harley Brown.

Was he your supervisor? A. Well, he came from the Couch end of it over with us, I mean, he was a supervisor.

Q. All right.

Now, did he make any statements concerning the change in the policy after the two weeks? A. Yes, we were talking one day and, very soon afterwards, and he said that the overtime was over.

He said as soon as your eight hours are up, hit the clock and go home unless you are told to stay.

Q. Unless you are told to stay? A. Uh-huh.

Q. Was that then the policy from that period on? A. Well, yes, sir, I suppose so.

274 Q. If there was overtime to work, who told you--how did you know about the overtime? A. Well, some of them--it would depend on who was on duty, would come by and ask us to stay, if you would, and work a while longer and help them catch up.

It would depend on which supervisor was on duty at the time.

Q. All right.

Now, during this period shortly after the merger was there any-- what was the situation with regard to your wife being in the hospital?

A. You mean linked with the overtime?

Q. Yes, sir. A. Well, there was a period--well, the month of January my wife was in the hospital and there was some overtime work being done and Jack Brandon asked me on two or three occasions if I would stay and I just made the statement that I would like to be off if possible on time to go by the hospital and be with my wife.

Q. Now, what year was that in? A. That was this year.

Q. January of 1965? A. Yes, sir.

Q. O. K.

At any time prior to that situation was--did you ever have any discussion with the supervisor about not wanting to work overtime? A.

275 No, sir.

Q. What was your--what was your attitude toward overtime?

A. Well, I can use it.

Q. All right.

Now, did you ever turn down any overtime other than that? A.  
No, sir, other than that request and he said under the circumstances he agreed with me.

Q. All right.

No further questions.

MR. RICHARDS: I have a couple.

#### CROSS EXAMINATION

BY MR. RICHARDS:

Q. Mr. Thompson, I think you testified that your schedule back in the fall of '64 was to report to work at 10:00 a.m., is that correct?

A. Correct.

Q. Was that a Monday through Friday schedule? A. Yes, sir.

Q. Five days? A. Five days.

Q. And those other drivers that you testified about that got off at the same time you did, were they working a regular Monday through Friday schedule too? A. Yes, sir.

Q. You said yes, sir? A. Yes, sir.

276 Q. I think you testified at some point that Mr. Harley Brown said to you that he wanted you to start punching out at the end of eight hours unless told the contrary, is that right? A. Right.

Q. About when was that; can you put a time on it or do you remember? A. The best I can say it was either the Friday after that first two weeks or the following Monday.

Q. You say after the first two weeks? A. I mean after--well, the first two weeks starting September 21st, those two weeks and then

it was either on that Friday or the following Monday; I can't say definitely.

Q. All right.

Did he tell this just to you or was there someone else with you at the time? A. There was a group of us. There were two or three of us there.

Q. Were the others with you all Teamster drivers? A. I couldn't swear to it.

Q. Do you recall anybody else that was present? A. I recall one.

Q. Who was that? A. Rachel.

Q. Rachel. That is R-a-c-h-e-l, is that correct? A. R-a-c-h-a-e-l.

277 Q. You are back doing local pickup work around Shreveport, is that correct? A. Correct.

Q. And that is driving a bobtail? A. Right.

Q. What is commonly known as a bobtail? A. Yes, sir.

Q. Are you--what time are you generally in in the evening from making your pickups? A. It can vary anywhere from 5:00 o'clock to 6:30.

Q. But you are normally in by 6:30? A. Normally, yes, sir.

Q. Is this true of the other pickup drivers who are working a similar schedule with you? A. Yes, sir.

\* \* \* \* \*

278 TRIAL EXAMINER: Mr. Thompson, before Mr. Brown spoke to you in the conversation that you have just described, how did you decide or how did you know whether or not you were to work overtime in any particular day?

THE WITNESS: Before that conversation?

279 TRIAL EXAMINER: Yes.

THE WITNESS: They would just tell us that they would let us know when to go home.

TRIAL EXAMINER: You would work until told to leave?

THE WITNESS: Until told to leave.

TRIAL EXAMINER: Even if the end of your normal, your straight time?

THE WITNESS: Yes, sir.

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283

# AUSTIN HAMILTON

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

\* \* \* \* \*

BY MR. PALMER:

289

Q. Now, do you recall a meeting where Mr. Bailey, Mr. Baker and Mr. Brandon, Mr. Brown and a couple of lawyers were present on the dock and they discussed the overtime situation with you? A. I recall--not the date, but I recall the meeting.

Q. You do recall the meeting? A. Yes.

Q. Well, was you present at that? A. Yes.

Q. Now, in relation to the time of the commencement of the merger do you know whether it was a week later or a couple of weeks later or about that time?

Can you establish-- A. I don't really know whether it was two weeks or what.

290

Q. All right.

Well, what was said? A. I don't recall.

Q. Well, did they make any kind of a statement to the employees, Mr. Bailey or the officials of the Company at this meeting? A. They said that they were going to try to hold--that they were going to try to recognize both contracts at that time and that they were going to try to hold the overtime to a minimum.

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291

Q. Now, during after the merger and after this meeting on the dock now, do you recall whether there were times when the Teamster drivers checked out but the UTE drivers were retained to work?

\* \* \* \* \*

A. I have saw them check out, un-huh, but the people I named in that statement were not the people that I saw check out because of the fact that they came on 10:00 o'clock.

The people that I saw check out were the people that came on at 8:00 o'clock.

Q. All right.

Now, did you ever see Philip Thompson, May, Nash, Rachel check out and the UTE drivers be retained to work on the dock? A. I may have.

292

I usually check out at the same time they did.

I may have saw them check out five minutes before me on occasion.

Q. All right. A. As a rule, we checked out at the same time.

Q. All right.

Now, who--how did you know when to check out? A. When my foreman told me to check out.

Q. Who would that usually be? A. Jack Brandon.

Q. Jack Brandon.

When the Teamsters and I am referring to Thompson, May, Nash and Rachel left, who would tell them to check out? A. Well, I don't know.

If they checked out after their eight hours were up no one told them.

Now, if Jack Brandon asked them to work extra, I am sure that they worked extra but if he didn't ask them, they took it for granted that they were supposed to check out on their eight hours and went home.

\* \* \* \* \*

293

## CROSS EXAMINATION

BY MR. RICHARDS:

Q. Did you work a Monday through Friday schedule?

That was your schedule, wasn't it? A. Yes, sir.

Q. And the other drivers that you were talking about that came on the shift with you at 8:00 a.m., this was basically their schedule too, wasn't it, Monday through Friday? A. No, some of the utility people were working on Saturday.

Q. Do you remember who that was or which one that was that had the irregular schedule? A. John Guice has a utility job.

MR. RICHARDS: That is all.

Thank you, sir.

BY MR. SCHOOLFIELD:

Q. Mr. Hamilton, you were working at the airport driver terminal prior to the merger of the two terminals, weren't you? A. Yes.

294 Q. And you were working on the same route and same type of run that you are now, weren't you? A. Yes, sir.

Q. Your shift hasn't changed since the merger or before, has it? A. No.

Q. And isn't it a fact that you have worked on the same basis, checking out when Mr. Brandon told you to all of this period of time? A. Yes, sir. That is right.

Q. There has been no change in anything that you have been doing, has there? A. No change.

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296

## RECROSS EXAMINATION

BY MR. SCHOOLFIELD:

Q. Mr. Hamilton, since the merger and up until to date, the business has been steadily increasing at this Shreveport Dock, hasn't it?

A. Yes, sir, that is right.

Q. It is getting bigger every month.



You can see that there is more freight to handle every month than there was the month before, is that right? A. Yes, sir, that is right.

\* \* \* \* \*

297

WILLIAM M. HAYS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PALMER:

Q. Would you state your name, please? A. William M. Hays.

Q. All right.

Now, what is your occupation? A. Secretary-Treasurer and Business Manager of Truck Drivers Local 568.

Q. And is that here at Shreveport, Louisiana? A. Shreveport, Louisiana.

Q. All right.

In connection with your occupation did you represent the Teamster employees at the Couch Dock which we have been testifying about here?

A. Yes, sir.

Q. All right.

Now, in your capacity as a representative of the Teamsters Union, are you--to what extent are you familiar with the Red Ball Operation?

A. Well, to the extent that I have been on the dock several times plus our bid positions peoples duties, contact with the people.

298

Q. All right.

Now, are you familiar with the duties of your men who work for Red Ball to the extent that you know what the various classifications of the employees do? A. Yes, sir.

Q. Now, what are some of the classifications that are bid with regard to under the Teamster Contract for the Red Ball employees?

A. We have checker classifications, driver classification, dock men classification and that is mostly it.

I believe we have got one that is bid as a checker-driver.

Q. All right.

Now, what do the checkers do? A. In some cases there is a few that does nothing but check and in other cases they break out, check, drive, whatever there is to do but ordinarily the checkers, I would say several of the checkers are on the dock and do mostly dock work.

Q. All right.

Now, with regard to the drivers, are you familiar with what the drivers do? A. Yes, sir, drivers are, either sixwheel drivers run possibly local runs or sixwheel drivers that might take a volume load somewhere to unload that would take extra heavy pieces on a trailer and the other drivers are bobtail pickup drivers that go out and make city pickup and delivery and they deliver ordinarily in the morning and then pickup in the evenings and come back in and break out trucks and get loads ready for line drivers to pickup at night.

Q. All right.

In other words, the driver's duties are not limited to drivers then under-- A. No, they are not.

Q. Under the employees that you represent or work for? A. No, sir, or neither is the checker limited to checking duties.

Q. All right.

Now, what do the dock men do? A. The dock men are actually handling freight, loading and unloading pickup and deliveries and trailers and as a whole, just work on the dock.

Q. All right.

Do any of your members perform hostler duties? A. We have one, I believe, that is more or less a hostler.

Q. Do you know what classification he would come under? A. He is classed as a driver.

Q. Classed as a driver?

A. Yes, sir.

Q. All right.

Now, do you know who that man is? A. Dewitt Turner, I believe.

Q. Dewitt Turner.

Now, with regard to Mr. W. E. Salley, do you know what his classification is? A. He is a checker.

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304

MR. RICHARDS: That is agreeable.

There were five drivers, who had bid and were running what is known as local schedules. They were B. B. Daniel, W. E. Dean, R. L. Land, W. M. Kennedy and Troy Beavers.

If I understand a local schedule, it is a regular delivery run out of town but near enough that they can make a turn around so that the employee gets back in the same day that he leaves, is that a fair assumption?

MR. MATHEWS: I would say it is.

MR. RICHARDS: For example, the Springhill run which was testified about earlier was one of these local schedules.

305 MR. SCHOOLFIELD: Do you want to stipulate also to these hostlers. The classification would be checker-driver, but they are used as hostlers.

MR. RICHARDS: A hostler, as I understand it, is typically a yard driver.

MR. SCHOOLFIELD: Right, doesn't he come in on the dock at all. He is just out in the yard spotting tractors and trucks.

\* \* \* \* \*

TRIAL EXAMINER: On the record.

First of all, there has been some discussion here as to what local schedules are and Mr. Richards had proposed a stipulated explanation of the local schedules.

Is there agreement with respect to his proposed stipulation?

MR. PALMER: Everyone agrees, yes.

\* \* \* \* \*

308

BY MR. RICHARDS:

Q. Mr. Hays I hand you what has been marked previously as CP 2 and ask you, are you familiar with that document? A. Yes, I am.

Q. Now, this is a grievance, is that correct? A. That is right.

Q. Did you type it up? A. Yes, sir, I typed it up.

Q. Did you type it up in response to a request by employees represented by Local 568?

309

A. Yes, sir, I did. The first call was from Bud Giddens. He is the job steward.

Q. Now, Mr. Giddens' signature, does it appear on the grievance?

A. Yes, sir.

Q. As I understand it, there are signatures of other employees on the back? A. Yes, there is.

Q. These signatures on the back are: also employees that work at Red Ball, is your understanding? A. Yes, sir, they sure are, the Teamster Union.

Q. Now, what was done with that?

Was there a copy of that delivered to the Company or what was done with it? A. Yes, sir, there is actually four copies of the grievance typed up as such and upon receiving the call from Bud Giddens I typed up the grievance, carried by his house that night--he lives right close to me and had him sign it.

Then I told him or advised him that the rest of the members should come by and sign it and the next day there was approximately two had been by and signed the grievance prior to an occasion that I had to be over at Red Ball and I met with Mr. Bailey over there and at that time I presented him with the grievance that was typed up.

310

Then on arrival at the Red Ball Dock I had some employees of Red Ball, members of the Teamsters that raised the issue about the Springhill run, that they were not getting their equal share of them and that there were people on the Springhill run other than those that we had bid on that run.

I raised this issue with Mr. Bailey in his office that day and I had handed a copy of the contract as I had originally typed it and when I went back to the office I contacted Bud and talked to him about adding the Springhill Grievance to this particular grievance as one and it was in accord with him.

After that, well, these other members came by and signed it.

Q. Do I understand--I am handing you what has been identified as Respondent's Exhibit 1, Respondent's 1, Company, and have you just explained to us why it is that there appears on CP 2 a language about the Springhill run that doesn't appear on Respondent's 1? A. Yes, sir.

Q. Now, is Respondent's 1 a copy, is that the copy you delivered to Mr. Bailey when you took it up with him? A. Yes, sir, one of the copies.

Now, I don't know whether this is the exact copy that I gave Mr. Bailey or not because sometimes I give him--there is a pink copy, a yellow copy and a blue copy and I could have given him either one of the copies.

311 One of these copies were forwarded to the Company at a later occasion.

Q. Was there ever any formal disposition of this grievance, Mr. Hays, that you know off? A. Yes, sir, there was.

Q. What was the Company's position on the grievance? A. What was the Company's position?

Q. Yes. A. The Company's position that day in the office was that they were not recognizing the grievance procedure of either one of the contracts.

\* \* \* \* \*

312 TRIAL EXAMINER: I overrule the objection.

MR. RICHARDS: May that be a stipulation on the record then, as Mr. Schoolfield and I just stated, that they take the position as a legal matter that they cannot and will not recognize the grievance and arbitration provision of either the Teamster or the UTE contract and that they

have taken this position since sometime in September of 1964?

MR. SCHOOLFIELD: September 1, 1964.

\* \* \* \* \*

313

MR. ESTEP: I will agree to stipulate then.

MR. SCHOOLFIELD: I will stipulate.

MR. PALMER: I will stipulate to that.

MR. RICHARDS: Is it sufficiently clear in the record, Your Honor, the statement I have just made as to what the Red Ball legal position was on and after September 1, 1964 as regards the applicability of the grievance and arbitration procedures of the Teamsters and UTE Contracts and we have all agreed that the Company took the position that they would not recognize them, is that correct?

MR. SCHOOLFIELD: That is correct.

MR. ESTEP: That is correct.

MR. SCHOOLFIELD: That the contracts were not in force and effect.

MR. RICHARDS: I would offer--

314

TRIAL EXAMINER: Wait a minute. You added a sentence after the agreement was indicated.

Is that the agreement that the contracts were not in force and effect?

MR. MATHEWS: That is our position.

MR. SCHOOLFIELD: That is our position.

TRIAL EXAMINER: And you were not recognizing any grievance and arbitration provisions of either--

MR. SCHOOLFIELD: Because of that position, that is right.

TRIAL EXAMINER: Is that what you have agreed to?

MR. RICHARDS: This is fine.

MR. ESTEP: This is fine.

\* \* \* \* \*



315

## VOIR DIRE EXAMINATION

BY MR. SCHOOLFIELD:

Q. Mr. Hays, is Charging Party's Exhibit CP 2 the grievance that you filed with Mr. Bailey and is this the paper you handed Mr. Bailey? A. That paper?

Q. Yes. A. No, I either handed him this paper or a pink one or a blue one.

Now, we have three additional copies along with the original.

Q. What did you do with CP 2? A. With CP 2?

Q. Yes. A. Retained it with our files.

Q. And CP 2 has never come to the attention of the Company?

A. Verbally on the Springhill run, yes, sir.

On the balance of it, with the exception of this Springhill addition, this has come to the attention of the Company.

Q. But not CP 2?

TRIAL EXAMINER: Not this piece of paper?

BY MR. SCHOOLFIELD:

Q. Not this piece of paper?

316

A. Not that particular piece of paper but one of the copies has that addition on it.

Q. It is your testimony that a copy, an identical copy of CP 2 was filed with Mr. Bailey at one time or another?

TRIAL EXAMINER: With the exception of the last sentence.

THE WITNESS: With the exception of the Springhill situation that has not been biled with Mr. Bailey in writing, to my knowledge.

MR. SCHOOLFIELD: I see.

TRIAL EXAMINER: Were there signatures on any of the copies that you gave to him?

THE WITNESS: There were two signatures on the copies that I gave to him plus Bud Giddens' which makes three.

BY MR. SCHOOLFIELD:

Q. Actually then, so far as you know, Mr. Hays, Respondent

Company's No. 1 is the copy that you handed Mr. Bailey? A. Yes, I would pretty well say that this is the copy that I give Mr. Bailey.

\* \* \* \* \*

319

(The document above-referred to, heretofore marked as Charging Party's Exhibit 2, was received in evidence.)

\* \* \* \* \*

Q. (By Mr. Richards) Mr. Hays, in connection with CP 2, as I understand it, you did discuss the matters contained therein with Mr. Bailey at the time you presented the grievance, is that right? A. Yes, sir, I sure did.

Q. Did you ever give us a date on that? A. It was, I believe — the grievance itself is dated October 7 and it was the following day in the p.m.

Q. You think it was October 8th in the afternoon? A. Yes, sir, I would be reasonably sure.

Q. Are you reasonably sure that it was sometime during the week of October 6th? A. Yes, sir, it sure was.

Q. Mr. Hays, turn for a moment now to the wage rates in effect for the Teamster contract in the fall of 1964.

Is it correct to say that the drivers and checkers had the same wage rate? A. Yes, sir.

Q. And there was a different wage rate for the dock men, is that correct? A. Yes, sir.

Q. Was there a nickel an hour difference? A. No, sir.

Drivers at that particular time were \$3.14 per hour and dock men were \$2.98 per hour.

\* \* \* \* \*

325

MR. PALMER: No questions.

TRIAL EXAMINER: I have just one.

I think there have been several references to checkers. As I understand it at the moment, the record shows that a checkers duties

consist of checking but I am not quite sure what checking is.

Can you tell me?

THE WITNESS: A checker in this particular case with Red Ball at their new terminal, a checker is standing back of the trailer with a stand there and he may be checking as many as two or sometimes three trailers.

326 There is a man breaking out and he will let the checker know how many pieces of freight ~~that~~ is going to a certain consignee that is coming out and he checks and makes his notation on the freight bill and keeps up with the freight going in and coming out.

TRIAL EXAMINER: He keeps track of the--

THE WITNESS: Yes.

TRIAL EXAMINER: -- of the items going in and out of the truck?

THE WITNESS: Yes, sir. And this Company has people that actually, that is all they do, I understand.

#### REDIRECT EXAMINATION

Q. (By Mr. Palmer) In General Counsel's Exhibit No. 15 there is reference to hostlers and I don't think there has been any explanation just as to what hostlers is.

Can you tell us what a hostler is?

A. A hostler is a man that is ordinarily out on the yard hooking up and unhooking tractors from trailers and getting them on up to the dock where the people on the dock can unload them or load them, getting trucks on the ready line for the over-the-road drivers to go out with at night and it is just a matter actually of hooking and unhooking and maybe shoving a trailer somewhere.

Q. All right.

Now, under the Teasmter Contract does a hostler receive a driver's rate? A. Yes, sir.

327 Q. Now, under the Teasmter Contract if the job is bid, is it bid as a driver then? A. Yes, sir.

Q. You have no knowledge as to how it is bid under these UTE Contracts? A. No, Sir, not other than just looking at that.

MR. PALMER: No further questions.

### RECROSS EXAMINATION

Q. (By Mr. Richards) Mr. Hays, you were asked by the Examiner about a checker.

I take it, is it not a fact, that there are checkers or persons classified as checkers at the Red Ball Terminal here in Shreveport who do dock work as well as check? A. Yes, sir, there sure is.

Q. Mr. Ainsworth who testified this morning is classified as a checker, is he not? A. Yes, sir, and C. W. Smiley is a checker. He does practically all dock work.

Q. What do you mean by dock work? A. Breaking out trucks, either just breaking it out, wheeling it out, putting it on the line and sending it around or loading of trucks and manual labor on the dock.

Q. That is fine.

Thank you.

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TRIAL EXAMINER: Do you know whether or not hostlers may at times also do dock work?

THE WITNESS: Yes, sir, they do at times or they have at times.

TRIAL EXAMINER: Anything further of this witness?

Q. (By Mr. Schoolfield) Also you testified that the checkers — this company has checkers who do nothing but check.

It is also true that those checkers can handle freight also and do, in the course of a day, handle some freight isn't it, Mr. Hays? A. I assume they do, yes, in some cases.

MR. SCHOOLFIELD: No further questions.

MR. RICHARDS: Go ahead and finish your answer.

THE WITNESS: We have one, W. E. Salley — I don't think he handles much freight; he just checks all the time.

TRIAL EXAMINER: You are excused.

(Witness excused.)

Whereupon,

E. B. BAILEY

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Palmer) Would you state your name, please?

A. E. B. Bailey.

329 Q. And what is your occupation, Mr. Bailey? A. I am District Manager for Red Ball Motor Freight, Inc.

Q. District Manager for Red Ball Motor Freight at Shreveport, Louisiana? A. Yes, sir.

\* \* \* \* \*

350

CROSS EXAMINATION

Q. (By Mr. Richards) So I understand, Mr. Bailey, what you meant by the calibration of the time clock into one hundredths, I notice here and I am referring to GC-16-2, that on one day, a Friday, Mr. Anderson punched out at 20.50.

Now, is that 8:30?

In layman's language is that 8:30 in the evening? A. I believe that is correct.

Q. But 50 hundredths is — A. Or 6:30.

That would be 8:30.

Q. And 50 hundredths represents — A. A half hour.

\* \* \* \* \*

351

Q. ( By Mr. Richards) Mr. Bailey, I hand you what has been marked Charging Party's Exhibit 3, a two-page letter that appears to be signed by you and I will ask you if you will examine it and tell me, if you will, if you recognize it.

MR. MATHEWS: We will stipulate.

Q. (By Mr. Richards) Are you familiar with the letter, Mr. Bailey? A. Yes, sir.

MR. RICHARDS: May it be stipulated that CP 3, on or about the date indicated was mailed to all employees indicated on its address,

that is, all Red Ball dock and city employees in Shreveport?

MR. MATHEWS: What is the date of the letter?

MR. RICHARDS: November 13, 1964.

MR. SCHOOLFIELD: We have no objection to the introduction of the letter if it has been authenticated by Mr. Bailey.

MR. RICHARDS: My question was — well, I will ask Mr. Bailey.

Q. (By Mr. Richards) Mr. Bailey, do you know what was done with this letter that has been identified as Charging Party's Exhibit 3? A. It was mailed to the employees.

Q. That is all Red Ball dock and city employees in Shreveport, Louisiana, is that correct?

352 A. Yes, sir.

Q. That was on or about November 13, 1964? A. Yes, sir.

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353

BUD GIDDENS

was called as a witness by and on behalf of the Charging Party and, having previously been sworn, was examined and testified further as follows:

354 TRIAL EXAMINER: Mr. Giddens, you were previously sworn and took the oath and you understand that your oath still applies?

THE WITNESS: Yes.

#### DIRECT EXAMINATION

Q. (By Mr. Richards) Mr. Giddens, you are the same Bud Giddens who testified, I believe, earlier today, is that correct? A. That is right.

Q. At that time you testified that you were a pickup driver for Red Ball here in Shreveport, is that correct? A. Yes, sir.

Q. I think you testified also earlier that there was a Mr. Green who was a pickup driver working out of the Red Ball Terminal who was a UTE covered driver, is that correct? A. Yes, sir.

Q. I believe you testified that you and Mr. Green had the same ending or quitting time, is that correct? A. Right.



Q. What was your work schedule? You go on at what time in the morning? A. 8:00 o'clock in the morning.

Q. And Mr. Green, I believe you testified went on at 6:00 o'clock?  
A. Yes, sir.

355 Q. I want to direct your attention to, if you recall, an occasion when you were loading or unloading some freight at the Murphy Warehouse. A. Yes, sir.

Q. What was that, loading or unloading? A. I was loading.

Q. Did you have any encounter with Mr. Green on this particular occasion?

MR. MATHEWS: May we establish the time, Mr. Examiner?

MR. RICHARDS: Fine.

Q. (By Mr. Richards) If you will for me, Mr. Giddens, tell me about when this incident at the Murphy Warehouse took place with reference to the merger of the terminals and the second election which was held in December of 1964?

Can you tell me with respect to those periods about when this incident took place? A. Well, I think it was the following week after the meeting was held over here on the dock.

I was out at the Murphy Warehouse making a pickup.

Q. Now, can we pin that time down a little closer?

Are you referring to the meeting that the Company held out here on the dock about October 2nd, 1964? A. Yes.

Q. And you say it was in the week following? A. The following week, I am sure.

Q. All right. Excuse me.

356 Go ahead. A. I was out there making a pickup and they went Green out to relieve me so I wouldn't get no overtime and he was getting off at the same time I was.

\* \* \* \* \*

Q. (By Mr. Richards) Tell us, if you will, on this occasion what time of day was this? A. It was about 4:30 when he got out there.

Q. And as I understand it, 4:30 would be at the end of your eight hours, is that correct? A. Yes, sir.

Q. As you understand his schedule, the end of his ten hours, is that correct? A. That is right.

\* \* \* \* \*

357

TRIAL EXAMINER:

\* \* \* \* \*

Mr. Giddens, did Mr. Green tell you that he was there to relieve you?

THE WITNESS: Yes, sir, he told me to come in.

TRIAL EXAMINER: He told you to come in?

THE WITNESS: Right.

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TRIAL EXAMINER: And you left at that time?

THE WITNESS: I left and went in.

Q. (By Mr. Richards) When you say you left and went in, what do you mean? A. I went to the dock and punched off.

Q. Had you already begun to load your vehicle at that time? A. Yes, sir.

Q. What did you do switch vehicles with Mr. Green? A. He came in a tractor and I left him my tractor and trailer and went back in the other tractor.

Q. You took back to the dock the tractor that Mr. Green had brought out to the Murphy Warehouse? A. Right.

Q. Do I understand — was Mr. Green by himself when he came out there? A. Yes, sir.

Q. And told you he was sent out to relieve you? A. To relieve me.

\* \* \* \* \*

#### CROSS EXAMINATION

\* \* \* \* \*

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Q. What time did Green punch in that morning? A. Well, now I wasn't there. I don't know what time he punched in.

Q. So you don't know whether his time was up on this date or not, do you? A. Yes, I do.

Q. How do you know? A. He told me. He said I am on overtime and you are on overtime. I don't know why they sent me out here.

Q. That is what Mr. Green told you? A. Right.

Q. Now, what date was this? A. That was the following week after the meeting was over there.

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363

Room 409  
United States Post Office and  
Federal Building  
Shreveport, Louisiana  
Thursday, July 15, 1965.

The above-entitled matter came on for further hearing, pursuant to adjournment, at 9:00 o'clock a.m.

BEFORE:

DAVID S. DAVIDSON, Trial Examiner

\* \* \* \* \*

372

J. C. HOUSE

was called as a witness by and on behalf of the Respondent Company and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Estep) State your name, please. A. J. C. House.

Q. Where do you live, Mr. House? A. I live in Garland, Texas.

Q. How are you employed? A. I am employed by the Union of Transportation Employees.

Q. What is your position with them? A. I am business representative.

Q. What do you do for them? A. I try to represent my people.

Q. Is Shreveport, Louisiana one of the areas which you have in your area? A. Yes.

I have Shreveport and practically all of this East Texas and Louisiana area and even West Texas.

Q. You come over here on regularly scheduled meetings, do you not? A. Yes.

\* \* \* \* \*

374

Q. (By Mr. Estep) Now, Mr. House, back during the latter part — not the latter part, back during the latter part of August 1964 were you or the union contacted with regard to a consent election over here? A. Yes, we were.

Q. What was — what was the union's position about that consent election at that time? A. We come over here and talked to our people about it.

We didn't think it was right actually to — we held the bargaining rights here and we figured that it was our place to be here and we wanted to be fair to everybody so we come over here and talked to our people and explained the situation and it was everybody's agreement to go ahead and consent to an election.

Q. In other words, it is your statement that you didn't have to agree to any consent election at all? A. That is right.

Q. What was the sole purpose of your agreeing to this consent election? A. We more or less wanted to be fair about it, be pretty good people about it.

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Q. You had a vote over here, you say? A. Yes, we sure did, a lot of membership, whether or not to consent to an election.

Q. To agree to consent to an election? A. Yes.

Q. How did that vote come out?

\* \* \* \* \*

A. We had a vote with our membership down here at the Alamo Plaza about August 30th or something like that.

Q. It was on Sunday, wasn't it? A. Yes, and everybody agreed to be fair with this thing and go ahead and have an election and get it over with and go on about our business.

Q. And you did, in fact, instruct me to enter into an agreement with Red Ball and the Teamsters for the consent election, did you not? A. Yes.

Q. How did that election come out? A. We won the election.

376

Q. All right.

The first election wasn't very hard fought, was it? A. No, it wasn't too hard to fight.

Q. Why wasn't it fought pretty hard from our standpoint?

A. We just figured that it was our place, our union here to start with and why worry about it.

The way I seen it, we had more people than they did.

\* \* \* \* \*

382

Q. (By Mr. Estep) Now, there were several meetings held immediately after the consent election meeting that was held in Shreveport, were there not? A. Yes, sir.

Q. And at those meetings both you and Mr. Scruggs answered questions placed to you by either the UTE or the Teamsters who attended those meetings, is that not correct? A. Yes, sir.

\* \* \* \* \*

TRIAL EXAMINER: Since there were several meetings will you tell us, will you try to identify which of the meetings you refer to when you describe your remarks?

THE WITNESS: I don't remember the dates of the meeting, as far as that goes, but I can refer to, oh, the drivers' room meeting or an Alamo meeting but on the bunk house meeting we had people in a little group and they would ask questions regardless of seniority and

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things of that nature and the only thing that we would tell them that keeping in mind that the surviving union would have to negotiate with Red Ball on those issues.

Q. (By Mr. Estep) Did you tell them anything about systemwide seniority? A. Yes, we explained our systemwide seniority to them.

Q. And that is the seniority that applies all over the system, not just in one location, is that correct? A. That is right, not all over the system but all over Red Ball system but all over the system that is covered under our contract.

Q. I see.

Did you ever make the statement that they would go to the bottom of the list, meaning that the Teamsters would be on the bottom of any seniority list? A. No.

Q. Do you further recall that there was a second exhibit placed into evidence with regard to the letter signed by Mr. Scruggs, president of the union? A. Yes, I recall that.

Q. You recall that.



Was that letter in response to other letters written by the Teamsters? A. Yes, sir.

384 Q. Were either one of these letters placed into circulation before propaganda had been placed into circulation by the Teamsters? A. No.

\* \* \* \* \*

#### CROSS-EXAMINATION

Q. (By Mr. Schoolfield) Mr. House, you testified about system-wide seniority.

Would you tell the Examiner, for clarification purposes mainly, just what areas of Red Ball Motor Freight your union represents, what areas and cities that you represent on Red Ball Motor Freight?

A. Yes, we represent Shreveport, Louisiana, El Dorado, Arkansas, Texarkana, Houston, Tyler, Longview, Dallas, Fort Worth and some in Amarillo.

Q. And those places are on your systemwide seniority?

A. Systemwide seniority.

\* \* \* \* \*

Q. (By Mr. Palmer) Mr. House, before the first election you said that you had meetings in several places.

385 Now, where did you have the first meeting? A. We had our first meeting over here at what we call the old drivers room in the terminal.

Q. The first meeting was at the drivers room? A. That was just talking to the people as they got off from work.

Q. How long — how many days was that before the election?

A. I don't recall. It was just a few days.

Q. A few days? A. Yes, sir.

Q. Was that after notice was posted that there would be an election? A. I am not sure about that.

Q. Was it after you all had signed the consent agreement to have an election? A. Yes.

Q. It was after that.

All right.

Then the first meeting you are talking about was in the drivers room? A. Yes, sir.

Q. When was the next meeting held? A. We had a meeting at the Holiday Inn on North Market.

Q. Holiday Inn.

386

All right.

Now, is that out of town here towards the airport? A. Yes, sir.

Q. Now, was that after the meeting in the drivers room?

A. Yes, sir.

Q. Now, do you recall how many days that was before the election? A. No, I don't.

Q. Was it just shortly before the election? A. Yes, just shortly before.

Q. Just a few days before the election? A. Yes, sir.

Q. Now, were there any other meetings any place else? A. No.

Q. Those were the main meetings, all right.

Now, the meeting in the drivers room, was that on company property? A. Yes, sir.

Q. Did you have permission from the company to use the drivers room? A. No, we sure didn't.

Q. How long did this meeting last? A. Oh, it was just a few minutes at the time people would get off work and they would come by there.

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Q. I realize each meeting would be with a few employees at a time. A. Yes, sir.

Q. But then, in other words, it was kind of a series of meetings with a small group at a time.

Now, how long did the whole series of meetings last? A. Oh, I don't remember. It didn't last too long.

Q. An hour? A. Oh, I would say an hour or an hour and a half or two hours.

Q. Was it in the afternoon or in the morning? A. I believe it was both times.

Q. In the morning and in the afternoon? A. I am not sure but I believe it was.

Q. Were these meetings in the driver room on more than one day?  
A. No, sir.

Q. Now, in these meetings did you have a chart upon the wall?  
A. Yes, sir.

Q. Did these charts show seniority? A. Yes, sir, it showed seniority, it sure did.

Q. All right.

How many charts were there? A. I believe there was one, best I remember.

Q. You don't remember for sure though? A. No. I sure don't.

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MR. PALMER: No further questions.

TRIAL EXAMINER: Mr. Richards.

Q. (By Mr. Richards) Let's see, Mr. House, you said there was a chart — you only remember one chart, is that right? A. I believe that is all I can remember, yes, sir.

Q. And that chart was the one that showed the seniority list with the UTE people on top of the list and the Teamsters on the bottom of the list, is that correct? A. No, the one I am thinking about is the dovetailed seniority list.

Q. O. K.

Now, did you also have a chart up there on the wall showing the UTE employees at the top of the list and the Teamsters from the Couch terminal on the bottom? A. I believe there was, yeah.

Q. There were two charts? A. Yeah.

Q. And the explanation was being made to the employees that came in there as to what seniority would apply, depending on what union won the election, is that right? A. Well, we always told them that the seniority would have to be negotiated. That is what we always told them.

Q. Well, you also told them, did you not, that you were going to protect their seniority against all others? A. Yes, sir.

389

Q. And you also told them that you would never agree to let any of the UTE people go to the bottom of any seniority list? A. That is exactly right, pertaining to systemwide seniority.

Q. Well, you have a seniority list here at this Shreveport terminal, don't you? A. There is a seniority list, yes, sir.

Q. And the people here bid on jobs on the basis of their seniority here in the Shreveport terminal, do they not? A. No, not our people. They bid on systemwide or they could until all of this come up and we can't even bid that now.

Q. All right.

Let me ask you this.

You had a list there at these drivers meetings with the UTE people at the top of the list and the Teamsters people at the bottom, is that correct? A. Yes, sir.

Q. You simply put UTE people, all UTE people at the head and put under them all the Teamsters from the old Couch terminal, is that correct? A. Yes, sir.

Q. Now, that was not with reference to their date of hire, was it? A. I don't recall whether it was or not.

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Q. (By Mr. Richards) Mr. House, you testified, I think on direct that Mr. Estep's letter that has been put into evidence was in response to some Teamster propaganda, is that correct? A. Yes, sir.

Q. Was it, in fact, in response to a letter written by Natt Wells, describing certain legal obligations with respect to their representation?

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A. Yes, I think it was. I am not sure about that.

Q. You have seen the letter that Mr. Wells wrote in that respect, have you not? A. Yes, sir.

Q. Let me hand you what has been marked as CP Exhibit 4, a three-page letter, and ask you if this is a letter to which Mr. Estep's reply was directed?

\* \* \* \* \*

THE WITNESS: Yes, this is the same letter.

MR. MATHEWS: Just for the record, may we have the date of that letter, Mr. Examiner?

MR. RICHARDS: Let me show it to you.

TRIAL EXAMINER: What is the date of the letter?

MR. RICHARDS: September 4, 1964

392 Q. (By Mr. Richards) If I understand your testimony correctly, Mr. House, Mr. Estep's letter which the UTE reproduced and circulated among the employees was in response to CP 4, is that correct?  
A. Yes, sir.

\* \* \* \* \*

394 TRIAL EXAMINER: Mr. House, do you know whether or not Charging Party's Exhibit 4 was distributed generally to the employees of Red Ball?

MR. RICHARDS: We will so stipulate, Your Honor.

THE WITNESS: Yes, sir, so far as I know.

TRIAL EXAMINER: That is to those who were represented by your union as well as the Teamsters?

THE WITNESS: Right.

\* \* \* \* \*

TRIAL EXAMINER: Now, as to the two lists that were in the drivers room the day you held those meetings, were those brought to the meetings by either you or Mr. Scruggs?

THE WITNESS: As far as I know Mr. Scruggs had the lists.

TRIAL EXAMINER: Do you recall what either you or he said to the employees about those lists?

THE WITNESS: Well, the seniority question come up, as far as I know, and there was a picture there. We showed it to them and we told them to keep in mind that all of these things will have to be negotiated under our contract.

TRIAL EXAMINER: Do you remember — how did you describe the list which placed the UTE employees at the top and the Teamster employees at the bottom?

395 THE WITNESS: So far as I know it was just a picture to show them how the dovetailed deal would be.

TRIAL EXAMINER: Did you indicate to them whether one or the other of the two lists would likely be adopted, depending upon the outcome of the election?

THE WITNESS: No, I didn't. I sure didn't. Of course, under the Teamsters contract now, it is so stipulated in their contract on your dovetail deal but under our contract—

TRIAL EXAMINER: Well, did you describe the dovetailed list then as indicating what would happen if the Teamster contract were to govern?

THE WITNESS: As far as I know, that is right, that was the reason for the two lists.

TRIAL EXAMINER: Did you describe the other list as to what would happen if UTE were to win the election?

THE WITNESS: No, it would just have to be negotiated.

TRIAL EXAMINER: I have no further questions.

MR. PALMER: I have another question, if you please.

BY MR. PALMER:

Q. When you described — when you discussed the list showing the UTE members at the top and the Teamsters at the bottom, was systemwide seniority discussed at that time? A. Our systemwide seniority?

Q. Yes. A. It was mentioned, yes.

396 Q. All right. Now, were the relative seniority of all of the other employees, systemwide, demonstrated to the employees at these meetings? A. You mean systemwide under our contract?

Q. Yes, sir. A. Yes, sir.

Q. How was it demonstrated? A. Well, it had their seniority date on there.

Q. I mean, did it have the seniority date of all other employees throughout the system? A. No, it didn't have that.

Q. Under your concept of systemwide seniority would all of the



other employees in the system been in competition with these employees?

A. What do you mean, all other employees?

Q. I am talking about your explanation of systemwide seniority.

A. I am talking about systemwide seniority under our contract.

Q. Yes, sir. Well, how far does systemwide extend? A. The terminals that I mentioned a while ago.

Q. Did it extend to all Red Ball employees at the various other terminals? A. Under the UTE contract, yes, sir.

397 Q. Under the UTE contract. All right. Now then, my question is this again. Did you demonstrate the relative position of all of the other employees in competition at the various other terminals with these employees at the Shreveport terminal? A. I believe I mentioned the fact that those people could go other places on our system. Now, whether I went into detail as far as claiming it or not, I don't know.

MR. PALMER: No further questions.

TRIAL EXAMINER: I take it that the lists did not show, for example, where Dallas employees of Red Ball would fit in with respect, relative to the UTE and Teamster employees in Shreveport?

THE WITNESS: No, it did not.

MR. RICHARDS. If the Examiner please, your question raised a couple and I would like to further cross, if I may.

TRIAL EXAMINER: Go ahead.

BY MR. RICHARDS:

Q. So that we are clear, the only names that appear on these lists were the names of Shreveport employees of Red Ball, is that correct, Mr. House? A. Yes, sir.

398 Q. So you and Mr. Scruggs had actually prepared these lists, had you not? A. Yes.

Q. And brought them down for the purpose of showing them to the people, is that correct? A. They were there, yes, sir.

Q. They were there for the people to see, were they not? A. Yes, sir.

Q. And did Mr. Scruggs not say to the people, at least, in one of

these meetings, that a picture is worth a thousand words and pointed to these lists? A. I don't recall whether he did or not.

Q. All right, sir, and so we are clear about the dovetailed list, the dovetailed list is supposed to show what the Teamster seniority would be, is that correct? A. Yes.

\* \* \* \* \*

#### REDIRECT EXAMINATION

BY MR. ESTEP:

Q. Mr. House, how many employees does Red Ball have, as far as UTE is concerned? A. As far as UTE is concerned, oh, I would say, seven or eight hundred.

Q. And to have prepared a chart showing all of the systemwide seniority, you would have had to have a list with seven or eight hundred people, would you not? A. Sure.

399 Q. And these lists were simply of the Shreveport people and they included their seniority? A. Yes, sir.

\* \* \* \* \*

#### JACK HOLOMAN

was called as a witness by and on behalf of the Respondent Company and, having been first duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

BY MR. ESTEP:

\* \* \* \* \*

400 Q. Considering the Abbey Street facility, will you describe the manner in which merchandise is removed from the trucks? Was it automatic or by hand or how is that done? A. Well, we did most of the work with two-wheelers and some large floats. I was a driver

401 pick-up man and also worked as break-out man along with the checker. There would be one checker and one other man to go into a trailer. We would break the freight out together, put it on the float, carry it to whatever trailer that it was designated to go to and unload this float in this stipulated trailer.

Then, I would go back to the trailer that we were breaking out and load another buggy load of freight. The checker would stay in the trailer that was being unloaded and would try to find the freight pertaining to a certain shipment while I was off somewhere else on the dock unloading the previous load

Q. All right. Do I understand you correctly that you are saying that in unloading a truck, one driver worked with one checker? A. One man worked with one checker.

Q. Now, you have been at the Airport facility for sometime now. Is that the way it is done at the Airport facility? A. No, sir.

Q. Would you explain the difference between the checkers and the dockmen? A. With the automatic chain, one man can break out the trailer with a checker standing back. The reason the checker stands back on the dock is so he can check more than one truck. As a man  
402 comes out of the trailer he tells the checker what he has on that buggy, hangs it on a chain, the checker checks it off and we mark the buggy as to where it is designated to go and we forget about it and go on with our breaking out of this particular trailer.

Q. In other words, you are saying that one of the major changes is automation? A. Yes, sir.

Q. And you are doing it automatically by having the buggies on some kind of a track, whereas, at the Abbey Street facility these buggies were handled by hand, is that correct? A. That is right. We pushed the buggy from one place to the other. You were breaking out but you had to know where every trailer was going in order to get your freight to the stipulated trailer, to the right trailer.

Q. All right. Now, at the Airport facility is it not correct that one checker can handle more than one truck? A. One checker can handle three or four trucks. Sometimes I have seen some of the checkers handle as many as five trucks at one time when they were short on checkers and they could do this efficiently.

Q. Now, were the trucks numbered or the destinations coded the  
403 same way at the Airport facility as they were at the Abbey Street

facility? A. No, sir, they were not. We had 14 berths on one side of the Abbey Street terminal and had three on the other which makes a total of 17 berths we could back trailers up to. Each day or several times during a day we would change as to, say, for instance, our No. 2 berth early in the morning was a break out and after we got that one empty we could put a trailer right back in there that would be a Monroe. If that trailer became full and was pulled out, there might be a New Orleans put back in there behind it.

If you were breaking out down on No. 14 and had freight that you were carrying a Monroe trailer, after this first Monroe trailer was full, you would have to find where your second Monroe trailer was, if you had a second Monroe. It could be No. 16 over on the other side of the dock.

There was no set pattern as to where the freight would go. We had to find out as we went along. We had to play it by ear.

Q. All right. Now, that is at the Abbey Street facility. At the Airport facility, is that the same situation? A. No, sir. Each day each hole has a certain trailer to go in this hole. We have four holes that can  
404 be changed or that at times are changed at random to take care of overflow but other than that, say, for instance our Lufkin is in No. 67. It will be 67 every day. A man sees a buggy that is marked 67 and he knows it is going to Lufkin and to take it in there and he doesn't have to worry, that he doesn't have to worry about it being a Kilgore trailer.

\* \* \* \* \*

Q. At the Abbey Street facility do the drivers break out in the same manner that they do in the Airport facility? A. Not particularly  
405 the same manner. The drivers on the Airport Drive have particular jobs that they do, more so than at the Abbey Street terminal.

At the Abbey Street terminal we did a little bit of everything from fork lift to check to bobtail to trailer. We did it all, wherever there was something needed. We could move from one to the other.

At the Airport terminal a man generally stays in one vicinity, something that he — if he is breaking out a trailer, why, he generally stays in that trailer and has nothing to concentrate on but getting the

freight out of that trailer, counting it, so he can tell the checker what he has. He doesn't have something else that —

Q. At the Airport facility do the checkers move from area to area, from day to day, insofar as their checking is concerned? A. Well, now, they stay generally in the same area.

Q. Why is that? A. So that they can check freight coming from the same towns each day and be more familiar with the general run of freight that they are handling.

Q. Is there anything complicated about a particular location, relating to another location? A. I wouldn't say that it was complicated but I would say that a man who was handling freight from Memphis each  
406 day would know about who the freight was going to, the general run. If he gets several bills here that have typographical errors he can readily just read over the error, I mean, and go right on processing the freight, where if he is handling Memphis today and Dallas tomorrow and Houston the next day, he is at a disadvantage as to knowing the general run of the freight that he is handling.

\* \* \* \* \*

TRIAL EXAMINER: Do you know of any other ways there is a disadvantage?

THE WITNESS: If a man is moving constantly from one place to the next, he has to have a general knowledge of all of the places that are shipping into the terminal rather than just one area and the man just has  
407 to concentrate on remembering and knowing a lot more than if he specializes on one area. If he specializes on one area he can do anything that he specializes in better.

BY MR. ESTEP:

Q. Mr. Holoman, calling your attention to the fact that it was stipulated in the record that the merger of these two facilities took place on the 1st day of September 1964, I will ask you if you can recall whether or not during the first two weeks thereafter that you received any over-time? A. I did not.

\* \* \* \* \*



410

## CROSS-EXAMINATION

BY MR. PALMER:

Q. During the period after the merger for the two weeks was there any general discussion among the employees of Red Ball about the fact that Teamsters were receiving, would receive more overtime than they would? A. I recall some discussion. There was a lot of discussion and there was a lot of confusion.

Q. What do you mean confusion? A. Well, there was a complete new process of what we were doing to what we had been doing two weeks before. We had another thirty some odd men that were moved in. We had a lot more freight that was being handled in the same area and therefore, we had to change our system or I say we had to change — our system was changed and we had to adjust.

\* \* \* \* \*

411

BY MR. RICHARDS:

\* \* \* \* \*

Q. As I understand, you are working during the middle of the night and that is your regular shift, is that right, from 8:30 p.m. to, what did you say, 6:30? A. Yes, 6:30.

TRIAL EXAMINER: Is that 6:00 or 6:30?

THE WITNESS: 6:00 a.m.

BY MR. RICHARDS:

Q. I think you testified previously that on that schedule you don't come in contact with a lot of employees, is that correct?

412

A. Not a lot of them, no, sir.

\* \* \* \* \*

414

BILL GILES

was called as a witness by and on behalf of the Respondent Company and, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. ESTEP:

\* \* \* \* \*



Q. All right. Now, during that period of time I believe there has been some previous testimony concerning a run at Springhill. What is Springhill, Mr. Giles? A. Well, sir, it is a small town. It is not actually Springhill. It is a little paper mill town called Cullum which is about 50 miles from Shreveport here that we get quite frequently straight loads of freshly manufactured paper and boxes, going through, breaking out for Shreveport and so forth and so on.

\* \* \* \* \*

416 Q. Now, during the period of September 21st, 1964 through December 2nd, 1964 did Red Ball hire men out of the Teamster Union hall to make that run? A. Yes, sir.

Q. During this period of time you didn't receive any overtime?  
A. No, sir.

\* \* \* \* \*

417 Q. Do you know any of these men or the names of any of these men who worked from the Teamster hall out there during that period of time? A. Yes, sir.

Q. Would you state those names, if you know? A. There is one fellow that I know by Red Huckabee.

Q. All right who else? A. There was a fellow they called Burr.

Q. All right A. There was a boy named Blunt and on other occasions there was others but I do not recall their names.

\* \* \* \* \*

422

E. B. BAILEY

was called as a witness by and on behalf of the Respondent Company and, having been previously duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

BY MR. SCHOOLFIELD:

Q. Would you give your name and address for the record, please, sir? A. E. B. Bailey, Shreveport, Louisiana.

Q. What is your position with Red Ball Motor Freight, Mr. Bailey?  
A. District Manager.

423 Q. Did you have a position with Red Ball Motor Freight (Southeast) at one time? A. I did.

Q. Would you tell the Examiner what your position was with Red Ball (Southeast)? A. Executive vice president and general manager.

Q. Would you explain briefly to the Examiner the reason for the corporation Red Ball (Southeast) and what company or group of employees it encompassed, please? A. Yes, sir. Red Ball Motor Freight, I-n-c, contracted and eventually secured authority from the Interstate Commerce Commission to purchase all of the stock of Couch Motor Lines, I-n-c. On approval by the Commission I resigned my position with Red Ball Motor Freight, moved to Shreveport to become the chief executive officer of the Couch Motor Lines, Incorporated. We immediately changed the name of Couch Motor Lines, Incorporated, to Red Ball Motor Freight (Southeast), Incorporated, and it was operated as a separate corporation until approval of the merger which came in June of 1964.

Q. All right, sir. Now, did Red Ball Motor Freight, Inc., have a terminal in Shreveport, Louisiana prior to the purchase of Couch?

A. It did.

424 Q. And it is also your testimony that Couch had a terminal in Shreveport, Louisiana? A. Yes.

Q. Now, is it a fact that the Couch terminal was on Abbey Street and the Red Ball Motor Freight terminal on Airport Drive? A. That is correct.

Q. Now, under the corporate name of Red Ball Motor Freight (Southeast) did the company operate two separate terminals in Shreveport, Louisiana? A. Yes, sir.

Q. Would you explain to the Examiner the difficulties or the problems that arose because of these two terminals, please?

TRIAL EXAMINER: Is this under the name of Southeast, it operated two separate terminals?

MR. SCHOOLFIELD: That is right or — at least, is that true, that is what I am asking the witness.

THE WITNESS. I misunderstood your question. Southeast did not have two terminals and neither did Red Ball.

BY MR. SCHOOLFIELD:

Q. But Red Ball had a terminal and Southeast had a terminal?

A. That is correct.

Q. However, Red Ball (Southeast) was a subsidiary corporation of  
425 Red Ball Motor Freight? A. Yes.

\* \* \* \* \*

426 Q. Now, as a result of this duplication, what decision was made by the company after the merger or the merger of the two corporations?

A. That we would have to, for economy, merge the two terminals.

Q. Was there a problem with reference to any union contracts on this merger? A. Yes, sir.

Q. What was that problem? A. The employees working at the Abbey Street terminal under the old Southeast Corporation were represented by the Teamsters Union. The employees working at the Red Ball Airport terminal were under the UTE contract or they were represented by the UTE people

Q. Now, have you — is it a true statement that you have worked employees under both contracts for a considerable number of years?

A. Yes, sir

Q. And you are familiar with each contract, is that right, sir?

A. Yes, sir.

Q. What are the basic differences, company wise, from your position in the two contracts, as far as your operations are concerned?

427 A. The basic difference is that under the UTE contract you can utilize the services of the employees in the classifications for two hours more each day without being penalized by premium pay or time and a half pay.

Q. Now, do you have any privileges in the UTE contract in reference to splitting shifts also? A. Yes, there are several things under the UTE contract that makes for economy. You can utilize 25 per cent of your people under the UTE contract on a split shift basis. You can

call a man down to work and work him for a minimum, I believe, of three hours, send him off and call him back later in the day, if you need him. Another advantage is that there is no weekly overtime provision in the UTE contract and you can work a man on the sixth day without premium pay, provided he does not exceed the daily provision of a ten hour or premium pay after ten hours. In other words, you can work under the UTE contract up to the regulations and restrictions imposed by the Interstate Commerce Commission which provides a 60-hour week or 70 hours in eight days.

Q. Now, isn't it a fact that the Texas operation of Red Ball Motor Freight is geared to this UTE contract operation? A. Yes, all of the  
428 territory in the Red Ball system under the UTE contract is set up on the 10 hour per day basis.

Q. Now, what is the importance of the Shreveport terminal to the system as a whole, after the purchase of the Couch area? A. The two territories so compliment each other that Shreveport has, since the merger, become actually the hub of the Red Ball operation. It is the focal point of all the schedules moving between the two territories.

Q. Now, those two territories would be Denver to Shreveport and Shreveport on to the eastern end of the line; that is the territory that you had reference to? A. This is correct.

Q. Now, would you explain to the Examiner, please, Mr. Bailey, the problems that arose after the merger of the operations or the consolidation of the terminals took place? A. We had visualized for quite some time — I had spent a few months actually at the Abbey Street address. I am familiar with the manner in which they worked and I know what was done and am familiar with the employees that worked at the Abbey Street terminal and I also am familiar with how the operation is conducted at the Airport terminal.

I knew or felt that an educational period was going to be necessary in order to efficiently handle the freight after the merger by virtue of length of experience of the Abbey Street people in the method of handling  
429 freight at the Airport terminal and we were willing to and did have

these people report over there at the date of the merger, working on the same assignment that they had, alongside the people who were experienced in handling freight at the Airport terminal, in order that they could become familiar with the procedures and eliminate the costly mistakes of mixing of freight or misrunning freight or getting it loaded into the wrong trailer.

We have a terrific problem in keeping our service up to a competitive point and we can't afford to have too many mistakes and we must be sure that our people understand what they are doing and do the job efficiently and always looking toward, of course, the economy in operation. We must have economy by virtue of the fact that in the business of transportation, we basically buy and sell labor and our big expense, of course, is our payroll and that constitutes around 55 per cent of the gross revenue dollar so it is of utmost importance that management and supervisors be certain that they are always looking toward saving money.

Q. In the first two weeks after the consolidation you worked both groups side by side, approximately the same hours, is that correct?

A. That is correct.

\* \* \* \* \*

430 Q. \* \* \* Now, there has been some testimony on this record in reference to an October 2 meeting with the employees. Were you present at that meeting? A. I was.

Q. Would you tell the Examiner what occurred at that meeting?

A. At that meeting — actually, there were two meetings on the same date. We held two meetings in order to get all of the employees because we wanted them to have the information and all have it alike.

431 We called this meeting for the purpose of discussing with the people the problems that we had just finished, this two-week period of education and so forth. At that meeting we told them that we would begin eliminating all overtime, wherever possible to do so and that no employees would be working overtime unless it was absolutely necessary; that the company certainly could not afford to pay time and a half,



a rate which is already high to get the work done and we would strive to eliminate overtime in all departments and in all classifications.

Q. Did you have an unsettled contract or labor union situation with the employees at that time? A. Yes.

Q. What did you say about that? A. We told them that every one was confused. They didn't know which contract they were working under, they didn't understand the legal proceedings that were taking place and that we would endeavor to be as fair as possible with all employees and would try to continue to pay the people under their respective agreements, in an effort to be fair, to lean over backwards to be fair but that we would not — we were not in a position to pay premium time or time and a half.

Q. Did you make any changes in reference to the treatment of the two groups at this time? A. Not at that time.

432 Q. And did you advise the employees that you would make no changes? A. That is correct.

Q. Now, were their differences in the shifts and reporting times when the terminals were consolidated? A. Yes. The reporting time of the people who came over from the Abbey Street terminal were somewhat different from those at the Airport terminal.

Q. Did you make any changes in these reporting times after the consolidation? A. We attempted to.

Q. Would you tell the Examiner about that, please? A. We attempted to change the starting time of some of the employees from the Abbey Street terminal to conform with the schedules being worked at the Airport terminal.

There was an objection made by the Teamsters Union that we would have to bid all of the jobs if we made any starting time changes and that, of course, is according to the Teamster contract but rather than add to the confusion, we went back to the old starting time to let each employee remain on his assigned position. We could not re-bid all of the jobs which we would certainly like to do because we need to create further economy but under the situation that we are in today



there would be no way we could make assignments and be fair to the  
433 employees of either union.

Q. So it is your testimony that you continued the same schedule of shifts and treatment of employees after the consolidation as they had been before at the separate terminals? A. Yes, sir.

Q. Now, will you state the company or your policy on overtime or time and a half pay and your instructions to your supervision in this regard, please? A. Instructions have always been to our supervisors to get the job done as economically as possible and not to work any overtime unless it is absolutely necessary and in order to police that facet of it, they must secure permission from me personally to work an overtime shift. It is important to us and we have to control it and I have to know about it myself when the overtime is being worked.

Q. When — what time of the day is the most overtime necessary, if at all? A. We find that we have a problem usually at the close of the day which is most difficult to control by virtue of the fact that we serve the public and we cannot dictate to the public the hours that they are going to receive freight and consequently, our collection and delivery drivers normally are out making pickups and we attempt to cooperate with the shipping public and we try to get the shipping public  
434 to cooperate with us but we have many customers who demand late pick-up service and sometimes the volume of business will vary. Today we might not get any freight from a certain company and tomorrow he might give me a dozen shipments so you can't control the finish time.

Q. All right. Are there certain seasons of the year in which the freight business is better than other seasons? A. Yes, there is a season.

Q. What is the trend of the freight business by the year? A. Well, normally, the seasonal trends are the second and third quarters are usually the heaviest. The first quarter and probably right at the tail end of the year, the last part of December, the last half of December it fluctuates considerably.

Q. The last half of December is high or low in the freight business? A. It is low.

Q. Now, are there certain days in the week in your terminal where there is more volume business? A. Yes, sir.

Q. What are those days? A. Normally in the terminal operation, Monday is an unusual day which cannot be controlled and then along at  
435 the tail end of the week, say, a Friday where the public generally operating on a five-day week are most anxious to get all of their freight shipped or get all of their freight into stock and not go into the weekend with some orders that haven't been shipped.

Q. Why is Monday an unusual day? A. Monday is an unusual day because of Saturday. The heavy business on Friday originating from all major shipping points reaches, say, Shreveport or any terminal, as far as that is concerned, on Friday night or Saturday morning. By virtue of our working a six-day week and having so much transfer freight, if that freight is not handled or unloaded and prepared for distribution on Monday, you have a hang-over from the weekend operation that must be handled on a Monday in addition to the regular business that normally comes on Monday.

Q. Is it difficult to work a Saturday?

MR. PALMER: That is a leading question.

MR. SCHOOLFIELD: Well, I will withdraw it.

BY MR. SCHOOLFIELD:

Q. You testified about work schedules on Saturday. You do work employees on Saturday, is that right? A. Yes, sir.

Q. Will you tell the Examiner how you get these employees or how  
436 you set your schedules up for Saturday work? A. We have some bid assignments for Saturday work. All other, where it is necessary, over and above your bid assignments is on a voluntary basis and we normally, if we feel or can anticipate the need for extra help over and above your assigned positions, we secure volunteers for that purpose and certainly, it is a premium time day for Teamster employees and consequently, we try not to use Teamsters for Saturday work.

Under your UTE contract it is permissible to use those men without premium time pay on the sixth day, as long as they do not exceed the 10 hours.

Q. Is there a difference in the two contracts on a guaranteed work week? A. Yes, sir.

Q. What is the difference, please? A. Under the UTE contract the employees are guaranteed 42 hours a week without any provision for overtime on a weekly basis. Under the Teamster contract it is an eight hour a day and a forty hour a week when you reach the premium time pay.

Q. And you have contracted to give 42 hours work a week to all UTE employees? A. Yes, that is the guarantee. Whether they work it or not, they receive pay for 42 hours at straight time.

437 Q. And the Teamsters is 40, is that right? A. Yes, sir.

\* \* \* \* \*

440 Q. Tell us the schedules and how you view the work done by this early morning crew. A. The early morning crew whose starting assignment, I believe, is 2:00 a.m. have the responsibility of commencing the  
441 days work on unloading inbound schedules.

Q. Is this line-haul equipment that has come in during the night?  
A. That is correct.

Q. Isn't it a fact that most of your motor carriers operate at night because of the less traffic condition on the roads insofar as this heavy equipment is concerned? A. That is basically true, however, our operation in over-the-road, all over the entire system is seven days a week, 24 hours a day and we have schedules that operate over long distances which can't reach a destination, say, overnight or early the following morning. They might arrive late. As an illustration of what I am trying to say, the distance involved in an over-the-road schedule would certainly govern the arrival time at destination terminal. Consequently, we have inbound schedules arriving at the Shreveport terminal around the clock and they might arrive at any time during the day, morning or night.

Q. Explain that to the Trial Examiner, the early morning crew

and their duties. A. The early morning crew, beginning at 2:00 a.m. work the available inbound schedules. The work load is analyzed constantly and these crews are dismissed on their regular tour of duty if it appears at the  
 442 time they are due off after they have completed their regular day's work that the remaining people will be in a position to handle the work load.

Q. Now, the reporting time and the schedule between the two groups was different, was it not, sir? A. Yes, sir.

Q. The — how did this affect any overtime for that early morning crew; could you explain that to the Examiner, please? A. During this period we had one group coming to work at 2:00 a.m. They were working under the UTE contract and we could use those people on a 10-hour day for the regular pay.

The group that was transferred over from the Abbey Street dock under the Teamster contract, the comparable crew came to work at 3:00 a.m. which is one hour after the UTE people report, the Teamster people being on an eight-hour day prior to reaching premium pay with men under those starting times finish their eight-hour day prior to the people who had started one hour earlier. They would finish, by virtue of the two hour difference, they would finish one hour earlier than the 2:00 a.m. crew.

Consequently, the 2:00 a.m. crew would work one hour longer or beyond the time that the 3:00 a.m. crew had punched off.

Q. Well, suppose during this period an emergency arose or you had extra work that needed to be done on the dock, who would normally  
 443 get the overtime? A. The people that are still on duty because the other crew has already gone.

Q. Now, what is the next shift that you have coming on? What would be those duties? A. We have another crew, in fact, we have people reporting all during the day.

Q. Well, you have pick-up and delivery drivers coming in at certain times, don't you? A. We have some people that come on for dock work at 5:00 a.m. and then we have other people coming on at 7:00 a.m. and then we have what we normally refer to as our pick-up and delivery people coming on at 8:00 and 9:00 o'clock.

Q. Are the pick-up and delivery people generally the employees that are in the terminal at your peak period from 5:00 to 7:00 p.m. at night? A. Some of them, yes, sir.

Q. Do you have any late schedules on pick-up and delivery?  
A. Yes, sir.

Q. Are these regular or just hot-shot runs? A. Well, some of them are regular and some of them are hot-shot.

Q. How many pick-up and delivery drivers do you have on these types of runs or schedules? A. Well, those are usually assigned to whoever is available at the time we get the call for service.

444 Q. What is the company policy as far as the assignment of overtime? Is it required or voluntary? A. Strictly voluntary. All overtime work is voluntary in nature.

\* \* \* \* \*

445 Q. Do you have a supervisor called Red Baker? A. Yes, sir.

Q. What is Mr. Baker's job? A. He is a dock foreman, dock supervisor.

Q. What are his hours of work generally? A. Generally, he comes on at 8:00 or 9:00 o'clock in the morning and his tour of duty is concluded between 5:00 and 6:00 each day.

Q. Do you have a superintendent or supervisor named Alvin Brandon or Jack Brandon? A. Yes, sir.

446 Q. What are his duties? A. Jack takes over the supervision of -- he comes to work around noon each day and it is his responsibility to wind up the day's work. He supervises the last working crew and finishes up the work load for each day.

Q. Do Mr. Baker and Mr. Brandon have any authority or duties in reference to the assignment of overtime? A. No, sir.

Q. Who assigns the overtime? A. I do.

Q. Now, do Mr. Brandon and Mr. Baker have any obligation, actually, to select the person to perform the overtime? A. Yes, sir, they do that.

Q. All right. Now, what are your instructions to them in



reference to the selection? A. Overtime is voluntary and a problem so my instructions is always to do it the most economical way and use the men that are available at the moment and get them off the clock as quickly as possible.

Q. Have they ever reported to you any difficulty in assigning overtime? A. Yes, sir.

Q. What were those reports?

447 MR. RICHARDS: And let's get when they were.

BY MR. SCHOOLFIELD:

Q. Let's go to the time of September 21, 1964. Did you have any reports around that time or thereafter for the next ten weeks?

A. Yes, sir, that is a constant problem that we have. Since overtime is voluntary in nature you must solicit the people that are willing to work overtime and they have reported to me on many occasions their difficulty in getting people to work beyond their normal tour of duty.

Q. Who is in charge of your dock generally, during the heavy overtime period from 6:00 to 8:00 o'clock at night? A. That would be Mr. Brandon.

Q. Now, is Mr. Baker in charge of Mr. Brandon? A. No, sir.

Q. What is -- is the authority equal between the two men?

A. Yes, sir.

\* \* \* \* \*

449 Q. Has there been any substantial difference in the amount of overtime compared before the consolidation and after the consolidation of these terminals? A. I don't think it is substantial. We have experienced an increase in our work load and the fluctuation has increased by virtue of increased business passing through the Shreveport terminal.

\* \* \* \* \*

450 Q. Do you have a bill spotter out there on that dock? A. Yes, sir.

Q. Who is your bill spotter? A. Jerry Giles, G. B. Giles.

Q. What does he do after spotting bills? A. All of the incoming bills which are the freight bills that come in with the line-haul schedules are immediately passed to Bill Giles, not Bill Giles, Jerry Giles.



Q. G. B. Giles? A. G. B. Giles. He will take each bill and code it by marking it in the upper right-hand corner as to where this shipment should go when it is unloaded. These shipments come in mixed loads and some of the freight might be for a certain route in Shreveport and some of it might be transferred to an outbound schedule. He must have knowledge of which trailer is going to be loaded to which destination and that code is normally the initial of the destination. As an illustration, Baton Rouge would be BR and New Orleans, NO and so forth. He puts that information on the bill. They are then passed to the checkers for unloading.

Q. Is there any other employee besides Mr. Giles that you use as a bill spotter? A. Not regularly.

451 Q. Now, if you will turn to Exhibit No. 12, GC 12, you will notice that Mr. G B Giles has a considerable amount of overtime. Can you explain that to the Trial Examiner, please? A. Yes, sir, in his — in the performance of his duties, by virtue of the schedules coming in all through the day and the tremendous amount of bills that he has to work, he is required to remain there until all bills are, substantially all of the bills are coded and spotted.

\* \* \* \* \*

452 Q. \* \* \* Will you turn to GC 11; that is the Teamster list. Do you see any names there of employees that you know of your own knowledge who prefer and have stated that they would rather not work these extra overtime hours, if possible? A. Yes, sir.

Q. All right, would you tell us who they are?

\* \* \* \* \*

453 THE WITNESS Yes, sir. I know from experience and I have been told by the individuals and I have been told by my supervisors that certain people refused to work overtime for various reasons.

BY MR. SCHOOLFIELD:

Q. Do you see any names on that list? A. Yes.

Q. Who are they? A. The second name on the list, B. W. Brown

is very outspoken in his position. He absolutely does not want overtime. He has made that statement to me and to many people.

Q. All right, do you see any more? A. Yes, sir, the fourth name down, Don Creamer has refused overtime and he has explained it to me why he has a problem insofar as his getting off time is concerned.

\* \* \* \*

THE WITNESS: Mr. Creamer has explained to me that he has an interest in a furniture store or a furniture auction for some reason and he prefers to get off on time to devote some time to that endeavor, whatever it might be. I am not familiar with it.

454 MR. RICHARDS: If you will tell us as we go along here, rather than try to do it on cross, when, if you recall when these conversations were, for example, with Mr. Creamer.

BY MR. SCHOOLFIELD:

Q. Do you remember when this conversation was with Mr. Creamer? A. No, but it is sometime within this period. I know.

Q. The 10-week period? A. Yes.

Q. Do you see any more, Mr. Bailey? A. Bob May is not interested in overtime. He has worked some. He hasn't particularly refused but he prefers not to work overtime.

\* \* \* \*

455 Q. All right. Do you have any UTE employees who prefer to work regular shifts without overtime? A. Yes, sir.

Q. Can you tell us who they are? A. We have some employees who reside outside the City of Shreveport, some of them as far away as Mansfield and Coushatta and for that reason several of our people prefer not to remain on after their tour of duty. Loyd Green and Buck Lofton have a personal problem that has been explained to me. Their problem is that they live in Houghton (phonetics), Louisiana, in that area and they come to work together in the same automobile and they seek to get off at the same time each day so they can both ride home together and if one should catch some overtime and the other didn't then he wouldn't have a ride home or the other would be forced to wait on him.

Q. Are there any more there? A. I don't recall any more.

456 Q. Mr. Bailey, have you ever instructed — oh, I thought you were through. Have you ever instructed your supervision to select certain individuals or certain groups for overtime, over other groups or given any instructions on this type of a thing to any of your supervisors in selection of overtime? A. No, sir, my only instructions to supervisors with regard to overtime is to use the available people at the lowest possible cost, taking into consideration the scale of pay, the availability or the desire.

Q. Do you have knowledge of any habit of the employees of punching off at the end of their shift? A. Yes, sir.

Q. Would you tell the Examiner how they conduct themselves in this manner? A. There are several of the people working on the dock who will habitually punch off at their end of their tour of duty. I have personally been on the dock at the time and have seen various individuals, two or three minutes before expiration of their time, go to the clock and stand there and wait for that last minute and punch out immediately and leave.

Q. Is this both groups or is this confined to any one particular group, Teamster or UTE? A. It is more Teamster than it is UTE.

\* \* \* \* \*

457 Q. Tell us about the tow-veyor (phonetics) chain. A. The tow-veyor (phonetics) is a chain built into the floor and it travels in a circular fashion and is pulled by under-the-floor power electric motor. It has lugs on it for the purpose of picking up the carts which have pins that drop down into a slot and it will catch on that lug and carry it in a circular fashion around the dock.

\* \* \* \* \*

458 Q. Tell us the system of the use of the buggies on the tow-veyor (phonetics) and the coding. A. Each buggy or cart is four wheel in nature and it has on the front of it a steel framework which comes up approximately four feet from the floor with a handle for the purpose of pushing or pulling and on the front of that is a small black section

is very outspoken in his position. He absolutely does not want overtime. He has made that statement to me and to many people.

Q. All right, do you see any more? A. Yes, sir, the fourth name down, Don Creamer has refused overtime and he has explained it to me why he has a problem insofar as his getting off time is concerned.

\* \* \* \* \*

THE WITNESS: Mr. Creamer has explained to me that he has an interest in a furniture store or a furniture auction for some reason and he prefers to get off on time to devote some time to that endeavor, whatever it might be. I am not familiar with it.

454 MR. RICHARDS: If you will tell us as we go along here, rather than try to do it on cross, when, if you recall when these conversations were, for example, with Mr. Creamer.

BY MR. SCHOOLFIELD:

Q. Do you remember when this conversation was with Mr. Creamer? A. No, but it is sometime within this period. I know.

Q. The 10-week period? A. Yes.

Q. Do you see any more, Mr. Bailey? A. Bob May is not interested in overtime. He has worked some. He hasn't particularly refused but he prefers not to work overtime.

\* \* \* \* \*

455 Q. All right. Do you have any UTE employees who prefer to work regular shifts without overtime? A. Yes, sir.

Q. Can you tell us who they are? A. We have some employees who reside outside the City of Shreveport, some of them as far away as Mansfield and Coushatta and for that reason several of our people prefer not to remain on after their tour of duty. Loyd Green and Buck Lofton have a personal problem that has been explained to me. Their problem is that they live in Houghton (phonetics), Louisiana, in that area and they come to work together in the same automobile and they seek to get off at the same time each day so they can both ride home together and if one should catch some overtime and the other didn't then he wouldn't have a ride home or the other would be forced to wait on him.

Q. Are there any more there? A. I don't recall any more.

456 Q. Mr. Bailey, have you ever instructed — oh, I thought you were through. Have you ever instructed your supervision to select certain individuals or certain groups for overtime, over other groups or given any instructions on this type of a thing to any of your supervisors in selection of overtime? A. No, sir, my only instructions to supervisors with regard to overtime is to use the available people at the lowest possible cost, taking into consideration the scale of pay, the availability or the desire.

Q. Do you have knowledge of any habit of the employees of punching off at the end of their shift? A. Yes, sir.

Q. Would you tell the Examiner how they conduct themselves in this manner? A. There are several of the people working on the dock who will habitually punch off at their end of their tour of duty. I have personally been on the dock at the time and have seen various individuals, two or three minutes before expiration of their time, go to the clock and stand there and wait for that last minute and punch out immediately and leave.

Q. Is this both groups or is this confined to any one particular group, Teamster or UTE? A. It is more Teamster than it is UTE.

\* \* \* \* \*

457 Q. Tell us about the tow-veyor (phonetics) chain. A. The tow-veyor (phonetics) is a chain built into the floor and it travels in a circular fashion and is pulled by under-the-floor power electric motor. It has lugs on it for the purpose of picking up the carts which have pins that drop down into a slot and it will catch on that lug and carry it in a circular fashion around the dock.

\* \* \* \* \*

458 Q. Tell us the system of the use of the buggies on the tow-veyor (phonetics) and the coding. A. Each buggy or cart is four wheel in nature and it has on the front of it a steel framework which comes up approximately four feet from the floor with a handle for the purpose of pushing or pulling and on the front of that is a small black section



designed for the purpose of marking the buggy with chalk to indicate to anyone that the freight on this buggy is going to a certain truck or certain spot on the dock or into a certain trailer. That is placed on there at the time the freight is put on there, the marking. It is the same marking that is placed on the freight bill by the bill spotter.

- 459 In that manner, the freight has a definite destination and anyone having responsibility of unloading the cart should be able to interpret the code on the cart and get the freight in the right trailer or on the proper spot, wherever it might be destined to.

\* \* \* \* \*

- 460 Q. Mr. Bailey, would you further outline the duties and qualifications of a hostler, please? A. A hostler, as we refer to them in our operation at Shreveport is a driver capable of driving all types of equipment, particularly tractor-trailer hookups and certainly engages in other work along with his hostler duties and primary, they are used for, here at our terminal, the hooking up or disconnecting of tractors from trailers, spotting the trailers at the dock or dropping them on the yard or hooking up tractors to trailers that are on the ready line, so to speak, for the line drivers to leave when they are dispatched on over-the-road schedules.

- 461 They also work closely with the maintenance department to be certain that the line tractors and trailers have been inspected mechanically and are serviced and ready to go in over-the-road service.

They work closely with the line dispatcher.

These are people that have the responsibility of assigning schedules to the over-the-road drivers. They must watch the equipment to be sure that a tractor has the proper state license on it or the schedule that they are going to send it on and it is a rather difficult job.

Q. Now, you have testified that you had one hostler at the Abbey Street terminal, is that right, sir? A. One individual classified.

Q. Were the same requirements necessary for a hostler at Abbey Street as it would be at Airport Drive? A. No, that job over there was merely local. They did not ready any of the line-haul



schedules. It was merely assigned the work on the lot or putting the trailers up to the dock or pulling them out from the dock.

Q. Primarily a driving job? A. That is correct.

Q. A hookup job? A. Yes.

Q. Now, there has been some testimony in this record with reference to six-wheel drivers as opposed to bobtails. Can you tell us  
462 what a bobtail driver is and what a six-wheel driver is? A. A bobtail driver or a pick-up and delivery driver, as they are normally referred to, qualifies to drive a straight truck. That is a truck chassis with a van body and it does not have a trailer connection of any kind. What we call, in the industry, a six-wheel driver is a man that has the qualifications and the ability to maneuver a tractor-trailer hookup or a combination, a unit having six or more axles.

Q. Where would you use this six-wheel equipment or the tractor-trailer combination in the city? A. They are used for the purpose of handling shipments of trailer loads or volume shipments, as we call them, delivering and picking up shipments of that nature. Quite often they might be dispatched to pick up a shipment of an LTL nature of such character as to size or length that would not be able to handle it on a straight truck or a bobtail.

TRIAL EXAMINER: What is LTL?

THE WITNESS: Less truck load. It is the same in the trucking industry as LCL is to the railroad industry, less carload and less truck load.

TRIAL EXAMINER: What does it mean?

THE WITNESS: Less truck load.

463 TRIAL EXAMINER: Oh, less than a full truck load, I understand.

THE WITNESS: A truck load would be one shipment that would fill the entire truck and anything less than that is a less truck load shipment.

BY MR. SCHOOLFIELD:

Q. Now, is it easier to control overtime hours on the six-wheel drivers or the bobtail drivers? A. I would say it would be easier on

the bobtail driver, under certain circumstances because here in Shreveport our bobtails or our city trucks are equipped with two-way radios and the city dispatcher is in constant contact with those men by use of the two-way radio communication. Our line-haul equipment is not equipped with radios and consequently, the dispatcher can't contact them and the driver can't contact the dispatcher without the use of telephone and too the use of trailer equipment usually is picking up a trailer load or delivering the trailer load which naturally requires longer than just picking up a small shipment.

\* \* \* \* \*

### CROSS-EXAMINATION

BY MR. ESTEP:

\* \* \* \* \*

464 Q. Would you state again what you did say, sir? A. I stated that all overtime would be eliminated whenever possible.

\* \* \* \* \*

465 Q. Isn't it a fact that there were some comments made by various members of the Union of Transportation Employees about the fact that they were not being treated equally? A. I have had some complaints of that nature, yes, sir.

\* \* \* \* \*

466 BY MR. RICHARDS:

\* \* \* \* \*

467 Q. Is it correct to say that the Couch portion was, at the time of acquisition, covered by a collective bargaining contract with the Teamsters? A. Yes, sir.

Q. Up until that time all of Red Ball south and east of Amarillo, Texas had been covered by the Union of Transportation Employees, is that correct? A. Yes, Amarillo, south and east, that is correct.

Q. If I understand correctly, up until the time of the merger of the two terminals in September, you were operating here in Shreveport almost as if you were only a connecting freight line, is that correct? A. That is about what it amounted to, yes, sir.

Q. Was it true that all freight coming in here from the west would be broken up at the Airport Drive terminal, is that correct? A. From the west, yes.

Q. And similarly, all freight coming from the east would have been handled at the Abbey Street terminal? A. That is correct.

Q. If I understood your testimony in connection with the matter of overtime of premium pay, you yourself don't personally select the persons or name the persons that are going to perform the overtime, is that correct? A. No, I do not.

468 Q. That is left to the dock foreman or dock superintendent in charge at the time, is that correct? A. Yes, after we have determined if we need to work some overtime, we usually decide how many people and so forth and it is his responsibility to select the people.

Q. It is his responsibility to select people? A. Out of the group available, yes, sir.

Q. So that I am clear, I assume that each time you have used the word overtime in your testimony you mean that time for which premium pay is going to be paid, is that correct? A. That is correct.

Q. And in each instance, I think, under both contracts, premium pay is described as time and a half the regular rate, is that correct? A. That is basically true.

\* \* \* \* \*

469 Q. You have described for us, I think, Mr. Bailey, some difference between a trailer driver and a bobtail driver. Is it correct to say that a pick-up driver is typically a bobtail driver, is that correct?

A. Yes, several of them are qualified to drive either or both types of equipment but when you refer to a bobtail driver he is usually a man that drives a bobtail truck, picking up and delivering small shipments.

Q. Most of your city pickup work is done in a bobtail unless you are getting a straight load or a heavy bulky shipment, is that correct? A. That is correct.

Q. I think the testimony is that you try to get your bobtails back to the dock by 5:00 or 5:30, is that correct, in the evening? A. We try

to get them in as early as possible and we must do that, must get our freight brought in and checked, billed, loaded out to get the line-haul schedules out as quickly as possible.

Q. So I will understand the process, when the freight comes in that you pick up during the day here in Shreveport, it is first — is it  
470 unloaded first off of the pick-up truck, is that correct? A. Yes, it is picked up and broken to the dock.

Q. And there it is broken out, as they say? A. It is broken out and checked on the bill of lading on which the driver picked it up. It is put on the tow-veyor (phonetics) to its proper destination, whatever it might be.

\* \* \* \* \*

Q. This is all done in the sense that you are running a 24-hour operation and you are trying to get all of the freight that you pick up during the day out that evening? A. That is correct.

Q. This, of course, I assume, is one of the services that you try to sell your customers, the overnight delivery — well, I am sure overnight into Dallas, overnight into Memphis and overnight into New  
471 Orleans, is that correct? A. Yes, sir.

\* \* \* \* \*

474 THE WITNESS: \* \* \* At the Airport terminal most of the time  
475 all but a very small percentage of it remains on the cart at all times so it is easier to move and if it happens to be that it has to be stored on the dock for a period to wait its loading in sequence, it remains on the cart and all that is left to do is to put it back on the chain or pull it into the trailer. The checkers at the Airport dock are people that are assigned the responsibility of checking the freight from the inbound trailers and they will check from one to four, using men to break out these trailers, put the freight on the cart, call the number of pieces, the destination and the consignee so we can properly check the freight bill and make sure there is a notation on the bill and then put on the tow-veyor (phonetics).

476 If this checker and his crew of load-out men finish this particular trailer or two trailers that they have, then they are moved across and used for loading out or whatever is necessary to do.

\* \* \* \* \*

477 TRIAL EXAMINER: \* \* \* Mr. Bailey, I think you were asked about complaints that were made by UTE employees about the overtime situation. I wonder if you could tell me when these complaints came to your attention and what they were?

478 THE WITNESS: I can't pinpoint them as to date but I had complaints from some of the individuals and I had some complaints by the business agent of the UTE that the members of his union were complaining that the company was paying overtime after eight hours to the other people and they were not getting overtime until after ten and that they felt that was not treating them fairly.

TRIAL EXAMINER: Do you know whether or not, with relation to the October 2nd meeting on the dock, were these complaints before or after or both?

THE WITNESS: I would say it would be after.

TRIAL EXAMINER: Following the October 2nd meeting?

THE WITNESS: Following the October 2nd meeting.

TRIAL EXAMINER: You mentioned and I think this is fairly clear but I want to be certain that I have understood you, that the end of the day is hard to control. I think this refers to the period roughly between 4:00 and 6:00 or 7:00 in the evening?

THE WITNESS: I meant by the end of the day that time of day where we close up the operation. Our hourly work periods cover roughly between 2:00 a.m. in the morning and as quickly as we can get through in the evening which is normally around 7:30 or 8:00 or 8:30. When everything is finally loaded out, line-haul drivers are dispatched, then we close the terminal for all practical purposes for the handling of  
479 freight unless during the evening there are schedules that come in that have passing freight that must be worked during this night and at that time we use the hostlers on duty to make those transfers that



arrive after the normal working schedule is closed out.

TRIAL EXAMINER: The end of the day then I take it, is somewhere between 6:00 to 8:00 or 8:30, depending upon the particular day?

THE WITNESS: That is right.

TRIAL EXAMINER: \* \* \* In looking over this exhibit I have wondered whether or not you may use different names within the two groups for similar functions and I wonder if you could enlighten me with respect to this. I notice on Page 1 of General Counsel's 15 you have Job 7, dockman and then Job 8 is non-driver/helper. Are these different classifications or are they the same?

THE WITNESS: They are the same. One is in the vernacular of the Teamster contract and the other is in the vernacular of the UTE contract.

TRIAL EXAMINER: And a utility man non-driver/helper such as Job. 10 would also be similar to a dockman?

480 THE WITNESS: He would be a dockman, not a qualified driver, being paid the dockman's scale.

TRIAL EXAMINER: What would the utility man appendage to the title representing —

THE WITNESS: Under the UTE contract there is a provision for a utility man which is within the 25 per cent of the total group whom you can work on split shifts.

TRIAL EXAMINER: I see. Is there anything comparable to a utility man under the Teamster contract?

THE WITNESS: No, sir.

TRIAL EXAMINER: I notice that some of the jobs such as Job 6 is called just checker. Job 20 on Page 2 is a checker/driver. Are these different jobs under the same contract or two different names for basically the same job?

THE WITNESS: There again, we are getting into the vernacular of the two contracts. When we put up the schedules we tried to be as explicit as possible to avoid any misunderstanding as to what certain individual assignments are and what he is expected to do and under the



UTE contract we use the term checker/driver. That is in the contract that way, written up that way and under the Teamster contract they are classified as checkers or they might be classified as drivers.

TRIAL EXAMINER: Then a checker/driver may either check or  
481 drive?

THE WITNESS: That is true of all of them.

TRIAL EXAMINER: That is true of the checker also?

THE WITNESS: Yes, if he is a qualified driver. There has been some qualified checkers, I am sure, that was not qualified drivers but normally they are and they are used in both categories.

\* \* \* \* \*

484

# RECROSS-EXAMINATION

BY MR. RICHARDS:

\* \* \* \* \*

485

Q. \* \* \* Perhaps you can just give us the name of the driver and my question is only those who are typically doing driving work either as typically pulling a trailer or typically driving a bobtail.

A. Do you want them by name?

Q. Yes, that would be easier. A. Litten would be a qualified trailer driver.

Q. Now, let me see, he is bid on the job as a hostler? A. That is correct.

Q. So he would not be typically driving a city pick-up or a trailer, would he, except around the yard? A. Primarily, he would be a trailer driver. He could and probably often does drive a bobtail truck. W. E. Salley classified as a checker is capable of driving either type.

\* \* \* \* \*

488

# ALVIN BRANDON

was called as a witness by and on behalf of the Respondent Company and, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. SCHOOLFIELD

Q. Will you give your name and address for the record, please, sir? A. Alvin Brandon, Shreveport.

Q. What is your job, Mr. Brandon? Who do you work for?  
A. Red Ball Motor Freight Lines.

Q. What do you do for Red Ball Motor Freight Lines? A. I am a supervisor.

Q. Here in Shreveport? A. Yes, sir.

Q. Is that a supervisor in the Airport Drive dock? A. Yes.

\* \* \* \* \*

489 Q. How long do you usually work down there? A. I generally work from noon until completion of my day which will vary 30 minutes up to an hour each day. We don't ever know exactly.

Q. All right. Now, in the course of your duties do you have occasions to ask or assign or request certain employees to work time and a half or overtime? A. In some occasions. In the afternoon our business load might increase as to where it would be necessary that we do work overtime. As a rule, Mr. Bailey and I generally, as he stated, he generally contacts me by telephone and asks me how the freight is stacking up and how much work we have to do and by then I am pretty well able to determine whether we have to work some overtime and if he gives me the O.K. to work overtime than I do choose the particular people to do the overtime.

Q. What is the criteria of this selection? How do you choose the people to work the overtime? A. Well, actually, all your overtime work, as you know, is on a voluntary basis. We can't force a man to work in excess of his eight or ten hours and from a company viewpoint, I try to pick a man that is more capable of doing the job and if I can I try to get one that is a little bit less pay. What I mean by that, if I can

490 get a dockman to work the dock, I will use him in preference to using a six-wheel man or a checker that might be in a higher rate of pay because on time and a half basis we are still saving some money.

\* \* \* \* \*

491 Q. What happened at the end of the two-week period? Did you  
have a meeting on the dock? A. Yes, sir. Mr. Bailey called a meeting  
of all of the supervisors there and I believe that we had two meetings,  
492 one in the morning and one in the afternoon and explained to them  
that the corporation was working together for the past two weeks and  
we was going to go back to our regular assignments and more or less  
put everybody on his own. What I mean by that is each man should be  
aware and familiarize hisself with the terminal.

Q. Was overtime mentioned at this meeting? A. Yes, it was.  
We was going to try to eliminate as much as possible.

Q. All right. Now, will you tell the Examiner your experience in  
the overtime area after this meeting, as to the employees? A. Yes.  
In this freight industry, it fluctuates from day to day. You can never  
tell at the end of the day what might happen.

In other words, may I explain this, Mr. Examiner, that, say up  
until 6:00 a.m. or 6:00 p.m. that everything is going good and all your  
crews, you are discharging them at the end of regular hour, working  
day, on their eight or the ten hours and all of a sudden you get one out  
of Sherman, Texas that has to be run and you get one out of Mansfield  
that you are not anticipating that has got a lot of work on it and your  
trailer comes out of Homer and you haven't anticipated that work load  
493 and the first thing you know, as we term it, you are snowed under  
and, of course, by that time Mr. Bailey, as a rule, has talked to me and  
asked me, which he always does, and I will tell him, Mr. Bailey, the  
work load is kind of heavy. I have a trailer out of Homer, pretty heavy  
night, real heavy and we have got two out of Springhill and we got one  
this morning out of Mansfield and we got one out of Sherman. The bob-  
tails were extra heavy this afternoon, what do you think?

Well, he generally will tell me, well, Jack, what do you think and  
I say well, it is pretty hard, let's go into 15 minutes on a man or 30  
minutes on a man. We try to break it down as nearest we can for the  
economy and at the same time give our customers the overnight service  
that we try to give.

Q. Now, do you contact the employees that you want to work overtime personally or how do you do that? A. Well, as a rule, yes. Say, for instance, that I may be on, say, for instance now on, we have a group of men which are UTE and also Teamsters that are, getting off time, say, regular getting off time is 6:30 p.m., well maybe I went down the dock to survey the situation, look the situation over and maybe I have already been permitted to work a little overtime so I see that I am going to need this particular overtime, then I will go and like I say,

494 if the manual handling of the freight, it calls for it down on the dock, I try to select a man that is a dockman, a man that is receiving a lower rate of pay for the economy of the company and at the same time I have to look out for a man that is capable of doing it and, as you know, some men are better at one job than another so I am familiar with those men. I try to use the best man available for the job.

\* \* \* \* \*

Q. Now, do you know an employee named Joe Fuller? A. Yes.

495 I speak of him as Jack Fuller.

Q. Jack Fuller, excuse me. He was a Teamster employee from Airport Drive, was he not? A. Right, he came over.

Q. Now, can you give the Examiner the history of Mr. Jack Fuller, I mean, after he came to your terminal and up to date really?

A. Yes. Jack is, shall I say first, is a good employee. Jack is a hard worker and he tries to do a good job and does a good job and I have repeatedly told Jack that he was doing a good job and what he mostly works is what we call the hole, in other words, that is the loading of the schedules going into the southeast division of the — in other words, to Monroe, to New Orleans, because he is more familiar with that particular locale and because old Jack has difficulty in reading, he doesn't have — he doesn't have much of an education and I don't think he can hardly read at all and as you know, we code, I think Mr. Bailey went into it, on their carts.

\* \* \* \* \*

496 He is making a good employee and as time goes on he familiarizes

himself with it more.

Now, I did have this trouble with Jack when he first come over there.

\* \* \* \* \*

497 Q. Now, do you have any others like that? Let me give you a list of names here. I will hand you an exhibit marked as General Counsel's Exhibit No. 11. Now, there is a list of the employees that came over from Abbey Street. Would you look down that list and give us the names of those men of whom you have knowledge do not care for this overtime work during this period of time, the 21st of September through December 2nd?

\* \* \* \* \*

Q. Go right on down that list, take your time and don't rush.

A. Brown.

Q. Is that Webb Brown? A. Webb Brown.

498 Q. What is the basis of your knowledge that Mr. Brown doesn't care to work beyond his eight hours? A. Well, unless Mr. Brown is just caught out in the city, he won't work. If he is caught out in the city on a schedule he will go ahead and finish up and come in and punch out and go home. Now, there were several occasions when he would come in and as a rule, his departure time is before I come to work but I have been there several occasions when he would come in and I have heard him make a remark, I don't want it. I want to go home.

Q. You have heard him say that? A. On several occasions.

\* \* \* \* \*

Q. What is the basis of your knowledge on Donald Creamer?

A. Well, Don has some outside source; I don't know exactly what it is. I have never gone into discussions with it. He has come to me on several occasions and tell me, Jack, I can't work overtime, I have got to get off at my regular departure time and I said well, Don, I appreciate your telling me.

Q. All right. Now, keep right on. Do you see any more?

499 A. This boy Darrett —

Q. R. T. Darrett? A. R. T. Darrett. Upon the first transfer and for a month thereafter this particular boy, I went to him one



afternoon and asked him, one night rather, and told him, I called him Deke (phonetics). I said Deke (phonetics), we are going to run a little overtime and I said, what about your staying over and helping me on some. Deke (phonetics) said well, I had just as soon go on my eight. I said, Deke (phonetics), if you will volunteer, I would appreciate your staying with me. Of course, now, at the present time Deke (phonetics) will stay over and help me but at that time he would not.

\* \* \* \* \*

A. Now, this boy Leroy Hicks, now, he, as a rule, will run into some overtime by virtue of him being out on a bobtail or a trailer and when he comes in he goes home. If it is on his eight hours he goes home and if it is on — if it is eight and a half, he goes home. When he comes in he goes home.

500 Q. What does he do, just wave at you or something? A. He just goes and punches the time clock and goes home.

Q. Do you tell him to punch it or — A. No, he just goes.

Q. All right. A. This boy, J. A. Lasyone, to the best of my knowledge, he has never worked an hour overtime since he has been with Red Ball. I can't get him to work.

Q. Have you asked him to work overtime? A. Yes, I have asked him.

Q. O. K. A. On several occasions. Rachel, he is another one. Especially right after the merger he came over here and you just couldn't hardly get him to work. He wanted to go home. You would go to him and ask him and sometimes he would say, oh, my wife is sick or something like that and just one thing and then the other.

Q. O. K. A. P. I. Thompson. I speak of him as Phil Thompson. I don't know, I think at one time maybe he and Rachel ride together and they always liked to leave at the same time. One would get off and the other one would go with him.

\* \* \* \* \*

504 Q. Does this affect your need for overtime, these schedules?

A. Yes, it does and it varies from day to day. We never know what



they have got on until they back up to the dock and maybe, for instance, you just have turned a crew of men loose. You just can't sit and anticipate what you might have come in. If your work load is where you can discharge your men on their regular days work, naturally, you want to do so and then maybe these men have no more than walked off the edge of the dock and gone home until one of these schedules arrives and then that might result in the man that is due off in one hour or two hours hence, maybe, having to stay over and work some overtime.

\* \* \* \* \*

Q. Now, in your selection of the men for overtime, do you ever consider whether or not they are Teamster or UTE men for the job for the selection? Is that ever in your — A. No, that definitely does not make me any difference. The only difference that it would make, whether he be a Teamster man or a UTE man is in your clause of the Union where one is working on an eight hour and a time and a half  
505 clause thereafter and the other on a ten hour with a time and a half clause thereafter. Now, that would determine in lots of cases of who I might ask.

Say for instance, I have got a UTE man due off at 7:30 and a Teamster man that is due off at 6:30, naturally, I am going to hold the man over that is due off at 7:30 because I anticipate that it will take an hour to do that job or sometimes it might take an hour and fifteen minutes; we don't ever know, so it doesn't make any difference, I mean, if the man is qualified for the job and he can do it in an efficient manner and if he is capable of handling the job.

\* \* \* \* \*

Q. Do you have any other fellows out there that have more difficulty in reading than some of the other employees? A. Well, I have this boy Darrett —

Q. Darrett? A. Darrett. I don't know whether Darrett has trouble reading or what it is. I mean, I have assigned him particular  
506 jobs to do and he is not doing me the right job. I mean, I would assign him to go get under certain trailers clarifying there clearly to

the boy because I knew him, what particular trailer to go get and go out into the city and pickup a volume shipment and, say, for instance, I have asked him on one occasion to get under my Longview trailer and go out to one of our shippers here in town and load some volume to ride and put his miscellaneous freight behind it and I was off at the other end of the dock supervising, helping load trailers down there and the old boy gets under my Lufkin Trailer and goes out and loads his Longview Freight on my Lufkin Trailers so naturally I had to bring it back in and transfer it out. On a guy like that you have to pretty well watch him. In other words, when he gets under a trailer, you have got to pretty well be there and know that he is doing the job right.

Q. Now, do you have any of the UTE men that don't like to work past, I mean, the full time the overtime? A. Yes, we do have.

Q. Do you know any of those fellows by name? A. Yes, this boy Bruce, J. T. Bruce, he doesn't like it. On several occasions he insisted that he go home on his ten hours. Of course, I have asked Bruce  
507 to stay and help me some and he, of course, would.

\* \* \* \* \*

508 Q. You have some of the UTE men that don't want but ten hours, is that right? A. Right. I mean, if he wants to go home he goes home. Of course, at that time if they want to go on eight hours I let him go. We only guarantee him a 42 hours so I don't really push him. This boy Farrell he doesn't particularly like it but, of course, on several occasions, he has gone home exactly on his ten hours, walked off.

Green, he doesn't like any more than his guarantee.

There is another one on there that I don't see. Where is O'Daniel?

509 Q. Look on the back page. A. Oh, I am sorry. That is Felton O'Daniel. He will go home every day.

Q. When are your particular heavy — oh, excuse me, are you through? A. Now, I missed one up here, this boy Garrett, R. L. Garrett, better known as Bobby Garrett.

Q. Why doesn't Bobby Garrett want overtime? A. Well, Bobby lives in Logansport, Louisiana for one thing and he likes pretty well to

get off on his guaranteed date so he can go home.

\* \* \* \*

511

## CROSS-EXAMINATION

BY MR. PALMER:

\* \* \* \*

514 Q. Now, let me inquire in just a little bit more detail about Jack Fuller. At the time, after the merger, did you ever actually ask him to work overtime when he actually refused? A. I did.

Q. Now, can you tell me when that was? A. That was sometime in the specific times that we are in discussion. I don't recall no particular date.

Q. Then is he turned — now, was it the first week after the merger? A. No, I would say it was the latter part of the first month or  
515 from — the latter part of the end of the two weeks of the first month. In other words, after the overtime, we were started cutting down on our overtime or were trying to and occasions happened where I would need a man to work alone. I would go to Jack and say "Jack, what about staying about 15 or 20 minutes" and Jack would start off over there and the first thing you know, he would be gone.

Q. Now, how many times did he turn you down? A. I don't recall but it was more than once.

Q. Did the fact that he turned you down once eliminate him from further consideration for overtime? A. It did not. It did not, because, as I have stated before, he is a dock personnel and if I need someone to store the freight in the dock, Jack is a dock hand and therefore, I would try to use him because of the cheaper rate of pay.

\* \* \* \*

516 Q. Now, with regard to R. T. Darrett, did you ever ask R. T. Darrett to work overtime when he turned you down? A. Yes, on several occasions.

Q. All right. Now, what was the first one, occasion? A. I don't recall no dates but it was in the first month of the merger.

Q. All right. When was the second time? Has he ever turned

you down more than once? A. Yes, he has.

Q. All right. Now, when was the second time? A. Probably the next day after I asked him before.

Q. How many times did you ask him, Darrett to work overtime when he turned you down? A. On several occasions. Just about every day there for awhile.

Q. Did he turn you down? A. Yes, he said I would just about as soon go on my eighth. I would approach it in this way, Mr. Examiner,

517 "Darrett, what about staying on about 15 or would you like to get some overtime" and I would just about as soon go on my eighth was the general reply that I would get from this boy each time. In lots of cases if I didn't get to ask Darrett, he immediately went home on the eighth hours.

\* \* \* \* \*

Q. Now, did Leroy Hicks ever actually turn you down? A. No, I never did get a chance to ask him. He was always gone before I would get a chance to ask him.

Q. You mean, you actually let him leave the dock before you even talked to him? A. That is right. There was nothing I could do about it. He comes in on the bobtail or on the particular assigned trailer work that he does and he checks in and comes down and punches the clock and leaves. I may be at one end of the dock or the other end of the dock when the boy comes out from checking in and I won't even get a chance to see him until he is done off of the clock and gone.

518 Q. Now, how about Lasyone? A. You could get Lasyone to work under no circumstances that I know of.

Q. Did you ever ask Lasyone after the merger to work? A. I have.

Q. And when did you ask him? A. I asked him on several occasions right after we moved over there and Lasyone would come off of his particular assigned bobtail route. He would check in and I would say "Lasyone, hang on and give us a hand here for about 15 or 20 minutes or maybe 30" — man I ain't going to work, I am going to the house, I am tired.

Q. When was the first time that you asked him? A. It was in the first month of the merger.

Q. Is that the best of your recollection? A. Yes, it is. I can't recall any dates.

Q. Now, Rachel, did you ever ask him to work any overtime when he actually turned you down? A. Yes, sir, I have.

Q. When was that? A. That was about the same time.

Q. But you don't remember specifically when he did? A. No, I didn't keep no records or dates on these men that refused to work overtime. If I did, I would have a list a mile long.

519 Q. How about Thompson? A. Yes, during the same time. In other words, I have asked Phil Thompson and Gus Rachel to work at the same time and they would go home together.

Q. Let me ask you this. Was most of this overtime work actually on the dock breaking out and loading the trucks? A. Yes, it is.

Q. All right. Is this physical work? A. Yes, it is.

Q. All right, it is fairly hard physical work? A. I wouldn't say it was real hard work. It is just a matter of pulling these floats or tow carts off the chains and throwing them in the trailers and breaking out these bobtails.

\* \* \* \*

525 TRIAL EXAMINER: Mr. Brandon, do you personally make the selection as to each of the men who would work overtime?

THE WITNESS: I do if the overtime has been granted for me to work. In other words, I have to get an O.K. before I can go into any overtime and providing that we do have to go into overtime, I select the man.

\* \* \* \*

527 ALLEN SCHOOLFIELD, JR.

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

BY MR. MATHEWS:

\* \* \* \*



535 Q. Now, Mr. Schoolfield, have you heard, while you were present in the hearing room, evidence with respect to some kind of a meeting on the dock of Red Ball on Airport Drive on or about October 2, 1964?

A. Yes, I have heard it.

Q. Do you have any personal knowledge of that meeting and, if so, what is the basis of your personal knowledge? A. I was present there at that meeting and the meeting was called after a consultation in your office in Dallas to quiet down a confusion that was at the Shreveport Terminal. An election had been held on the 10th of September and objections to the conduct of this election had been filed and the employees were expressing, evidently from Mr. Bailey, evidently were confused and that there was considerable problems of what contract would be followed, if any and I and my partner Smith —

536 Q. Is that Mr. Hugh Smith? A. Right, went to Shreveport and advised with the employees and told them that we were not going to change any working conditions of employment for either group; we were going to continue on in the same fashion and facet as we had before. Not a single man would lose a single dime of money in hourly rate of pay or a single hour from the guarantee of his contract and that we were making no unilateral or any types of changes and that we were making no unilateral or any types of changes but I did not tell them that the contracts were in force and effect. We had not regarded them in force and effect; we just simply made no changes.

They were to be treated exactly as they had been before and at the same time, that is before the consolidation at the same time we told them we were going to cut down and cut out this overtime that costs \$4.50 or \$4.75 an hour to move freight, we couldn't afford to do that and we were going to cut that out as much as possible. Mr. Bailey was there. Smith was there. I was there and we talked to two groups of employees.

Q. Approximately what times during the day did you talk to the two different groups of employees, if you remember? A. I don't recall the time, however, it was a morning talk and an afternoon talk, at the



convenience of the men when they would come in from their routes, if I recall right. I think it was later in the afternoon so that when the bob-  
 537 tails were coming in.

\* \* \* \* \*

539

PHILIP THOMPSON

was called as a witness by and on behalf of the General Counsel and, having been previously duly sworn, was examined and testified as follows:

\* \* \* \* \*

# DIRECT EXAMINATION

BY MR. PALMER:

\* \* \* \* \*

Q. \* \* \* Now, did you remember — do you remember the date, remember the merger of the docks on September 21, 1964? A. Yes, sir.

540 Q. All right. Now, during the first two weeks after the merger did you actually work overtime? A. Yes, sir.

\* \* \* \* \*

Q. At any time after the merger between the merger and December 2nd, 1964 did Mr. Brandon, the supervisor, ask you to work overtime when you refused to work overtime. A. Not to my knowledge. I don't recall refusing him between that date that you have mentioned.

Q. All right. During that period — A. I would like to make a statement, if I could.

Q. All right. A. Between the period of New Year's Eve and the last week in January I was asked to work overtime and I said I would  
 541 like to be off because my wife was in the hospital and I wanted to be with her as much at night as possible and I was told that was all right. Now, I didn't consider it a refusal to work.

MR. PALMER: No further questions.

# CROSS-EXAMINATION

BY MR. RICHARDS:

Q. Mr. Brandon, before the time your wife went into the hospital, Mr. Thompson, I am sorry, before the time you indicated when your

wife went into the hospital was there ever an occasion when you told Mr. Brandon that you did not want to work overtime? A. No, sir.

\* \* \* \*

542 BY MR. SCHOOLFIELD:

Q. Mr. Thompson, do you still ride with Gus Rachel back and forth to work? A. No, sir.

Q. Did you ever ride with Gus Rachel back and forth to work?  
A. Gus Rachel rode back and forth to work with me on occasion.

Q. When was this? A. The date, I don't know.

543 Q. It was right after the merger, wasn't it, when you started riding together. A. It was a good while after the merger. His pick-up was wrecked and, as a convenience to him, rather, I picked him up and brought him to work.

Q. Did you take him back home too? A. On occasion, yes, sir.

Q. Now, is it your testimony that you have never said to Mr. Brandon that I prefer not to work overtime tonight or I would like to get off on my eight other than this particular time when your wife was in the hospital? A. You mean at any point?

Q. Right. A. I won't say that I didn't, have never made the statement, I mean, if I had plans, someone was sick — I remember on one occasion my baby was sick.

\* \* \* \*

545 TRIAL EXAMINER: Do you know whether or not on those occasions you told Mr. Brandon why you didn't want to work?

THE WITNESS: I always gave an explanation as to why.

\* \* \* \*

#### JOSEPH FULLER

was called as a witness by and on behalf of the General Counsel and, having been previously duly sworn, was examined and testified as follows:

546 DIRECT EXAMINATION

BY MR. PALMER:

\* \* \* \*

Q. Do you recall the first two weeks after the merger, did you work overtime during that first two weeks? A. I don't recall right at the time but seems like I remember that there was a little time over, 15 or 20 minutes or something like that.

Q. Now, after the merger, up until the time of December 2nd, 1964, did Mr. Brandon ever ask you if you wanted to work any overtime and you told him that you preferred not to work overtime? A. No, sir. I never have refused working overtime.

Q. During that period of time did you ever tell Mr. Brandon that you preferred not to work overtime? A. No, sir.

\* \* \* \* \*

547

## CROSS-EXAMINATION

BY MR. SCHOOLFIELD:

Q. Mr. Fuller, is it your testimony that after the merger, after the consolidation, you never told Mr. Brandon that sometimes you prefer not to work overtime? Now, we are not accusing you of refusing to work overtime, we are just asking, did you ever tell him that you preferred not to work overtime; that you wanted to punch out on your eight? A. No, sir.

Q. You never did tell him that? A. No, sir.

Q. You are working some overtime now, aren't you? A. A little.

Q. A little? A. Yes, sir.

Q. Did you ever tell Mr. Brandon that you wanted to work overtime? A. I don't understand.

Q. Did you ever tell him that you wanted to work overtime? A. Yes, sir, I told him I wanted to work overtime as long as he needs me.

Q. When did you tell him that? A. I tell him most every day. When I am down near the dock and he tells me would you like to work overtime and I tell him yes, sir.

548 Q. You tell him that now? A. Yes, sir.

Q. How about back in November of 1964, did you tell him that then? A. Yes, sir, I did.

Q. Every day? A Yes, sir, and then he say how do you like the overtime and I say fine.

Q. He would ask you that every day? A. Not every day, but when he asked me, I told him yes. I wanted to work overtime.

Q. You would always tell him that? A. Yes, I never refused.

Q. Never refused? A. No.

Q. Did you ever tell him in October of 1964 that you would like to get off at the end of your shift, you had to go somewhere? A. No, sir.

Q. You never did? A. No, sir.

Q. Always ready and willing to work as long hours as he wants you? A. As long as he wanted me to work.

549 Q. You always feel that way? A. Yes, sir.

\* \* \* \* \*

#### LEROY HICKS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

BY MR. PALMER:

Q. Would you state your name, please? A. Leroy Hicks.

Q. Leroy Hicks? A. Yes, sir.

Q. Mr. Hicks, have you testified previously in this hearing?

Did you testify here? A. No, sir.

Q. You have not? A. No, sir.

Q. Are you a UTE or a Teamster employee? A. Teamster employee.

Q. Do you remember when the docks were merged? You started working at the new dock on September 21, 1964? A. Yes, sir.

550 Q. Do you recall that for about two weeks you had overtime?  
A. Yes, sir.

Q. Now, after that did Mr. Brandon ever come and ask you if you wanted to work? A. No, sir, he had never asked me if I wanted to work any overtime.

Q. And you stated that you would prefer not to work any overtime?

A. No, sir.

Q. Now, would you -- now, I am particularly interested in the period after the merger up until December 2nd of 1964. That is the period I am primarily -- up until the time of the second election. Are you familiar with that period? A. Yes, sir, I remember it.

Q. You remember the second election? A. Yes, sir.

Q. And it is your testimony that he did not? A. No, sir, he never did ask me to work any overtime.

Q. In which you said you preferred not to? A. No, sir.

\* \* \* \* \*

551

## CROSS-EXAMINATION

\* \* \* \* \*

BY MR. SCHOOLFIELD:

Q. Mr. Hicks, would you tell us what you do when you put in your eight hours? Do you just go punch out? A. Well, yes, sir, I punch off when my hours is up.

Q. You just go to your clock and punch off? A. Yes, sir.

Q. You have been doing that ever since they consolidated the two terminals, haven't you? A. Yes, sir.

Q. You do that on your own, don't you? Nobody tells you to punch off, do they? A. Well, most of the time he have told me to punch off but  
552 the times he don't tell me to punch off, I go punch off anyway when my time is up.

Q. That is when your eight hours are up? A. Yes.

Q. Because you know what time you came in and you know what time you are through, don't you? A. Yes, sir.

Q. You just punch off and go on home, don't you? A. Yes, sir.

Q. Sometime you don't say anything to anybody? A. No, sir.

Q. Doesn't that happen most of the time? A. Well, yes, sir, most of the time it do.

Q. That you just punch off and go home? A. Yes, sir.

\* \* \* \* \*

## REDIRECT EXAMINATION

BY MR. PALMER:

Q. Well, pardon me, you are working some overtime now, aren't you? A. Yes, sir, working some overtime but, I mean, I don't have no certain time to begin, in other words, I am supposed to be off at 4:30. At 4:30 I am liable to be just fixing to come in, I mean, it is liable to be 5:00, 5:30, 6:00 o'clock sometime when I come in.

553 Q. What is your classification? A. Well, I am a driver and I be on the trailer sometime and on the bobtailer sometime.

Q. Sometime you are on a trailer and sometime you are on a bobtail? A. Yes, sir.

\* \* \* \* \*

## RECROSS-EXAMINATION

BY MR. SCHOOLFIELD:

Q. When you are out then and you come in, as soon as you come in to the dock, you go over and punch out and go home, isn't that right? A. Yes, sir, if it is after 4:30.

MR. SCHOOLFIELD: All right. No further questions.

TRIAL EXAMINER: Have you ever been told what you are supposed to do when 5:30 comes around?

THE WITNESS: Yes, sir, I have been told to get off when my time was up.

TRIAL EXAMINER: Who told you that?

THE WITNESS: Mr. Brown.

TRIAL EXAMINER: When did he tell you that?

THE WITNESS: He told me that on a lot of occasions.

TRIAL EXAMINER: Well, did he tell you to do it on that particular occasion or did he tell you that as a regular matter when 4:30 came around you were to clock off.

554 THE WITNESS: Well, he could come and if I, you know, were working on the dock, most of the times, he could come and tell me my time was up.

TRIAL EXAMINER: Just punch out now?



THE WITNESS: That is right.

BY MR. RICHARDS:

Q. Mr. Hicks, did Mr. Brown ever tell you — Hurley Brown, is that correct? A. Yes, sir.

Q. Did he ever tell you that when your eight was up he expected you to punch out? A. No, sir, he didn't say he expected me to punch out. He would just come and tell me to punch out.

\* \* \* \*

BY MR. SCHOOLFIELD:

\* \* \* \*

Q. Harley Brown was your supervisor over at Abbey Street too, wasn't he? A. That is right.

Q. And this has happened since the two terminals were put together? A. Yes, sir, because he was dock foreman over there too.

Q. He is still dock foreman over here? A. He was.

555 Q. But he is not here any more, is he? A. No.

Q. When did he leave, do you know? A. I don't know, back in November, I think it was, October or November.

Q. He left the Airport Drive terminal back in October or November? A. I think it was November, I mean, October, if I don't make no mistake.

\* \* \* \*

R. T. DARRETT

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

# DIRECT EXAMINATION

BY MR. PALMER:

Q. What is your name, please? A. Darrett.

Q. How do you spell it? A. D-a-r-r-e-t-t.

Q. All right. Are you an employee of Red Ball Motor Freight?

556 Q. How long have you worked for Red Ball? A. Let's see, about three years, I believe.

Q. About three years. All right. Are you a UTE man or a

Teamster member? A. Teamster member.

Q. All right. Now, do you recall when the docks were merged and you moved over to the new dock in September 21, 1964, do you remember that? A. Yes, sir.

Q. Now, I am concerned with that time after the merger to December 2nd of 1964. Did Mr. Brandon ever come to you and ask you if you wanted to work overtime when you told him that you preferred not to work overtime? A. No, sir.

Q. All right. Now, did you ever tell him during that period that you preferred not to work overtime? A. No, sir.

Q. All right. Now, what time do you usually get off? A. 8:30.

\* \* \* \* \*

557

## CROSS-EXAMINATION

BY MR. SCHOOLFIELD:

Q. Mr. Darrett, 8:30 at night is the last shift, isn't it? Aren't you on the last shift, the last group of employees to work there?

A. Yes, there is some comes on at 8:30.

Q. Some come on? A. Yes, sir.

Q. Don't you fellows that get off at 8:30 pretty well clean the dock up and get things straightened up for the next day? A. Yes, sir.

Q. Now, you have told Mr. Brandon that you would rather not work overtime certain nights, haven't you? A. No, sir.

Q. You never said anything to him about it at all? A. No, sir.

\* \* \* \* \*

558

MR. SCHOOLFIELD: I asked him to estimate how many times he has asked you to work overtime in this ten-week period, after the two terminals were merged together.

THE WITNESS: I don't remember. He asked me — I worked some overtime but I didn't get much.

BY MR. SCHOOLFIELD:

Q. You say you didn't get much? A. No, sir.

Q. But you have worked some overtime in that period, didn't you?

A. Yes, I worked some.

Q. Did you tell me how many times he has asked you to work?

A. No, sir, I don't remember how many times.

Q. Well, each time you worked overtime he asked you to work, didn't he? A. No, sir, I just work on till he tells me to punch out.

Q. You just worked on until he told you to punch out? A. Yes, sir, till he tell me to punch out.

Q. I didn't understand you.

TRIAL EXAMINER: Till he told him to punch out.

BY MR. SCHOOLFIELD:

Q. Do you work every day until he tells you to punch out?

559

A. Just about.

\*

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UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.		DO NOT WRITE IN THIS SPACE	
		Case No. 15-CA-2589	Date Filed January 5, 1965
1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT			
NAME OF EMPLOYER Red Ball Motor Freight, Inc.		NUMBER OF WORKERS EMPLOYED approx. 1,000	
ADDRESS OF ESTABLISHMENT (Street and number, city, zone, and State) Post Office Box 10837 Dallas, Texas		TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.) freight line Identify principal product or service transportation	
The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.			
2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)			

See Appendix Attached

NATIONAL LABOR RELATIONS BOARD  
OFFICIAL EXHIBIT NO. 15-CA-2589-1  
0 and 1  
Mentioned  
Received  
Rejected  
In the name of Red Ball Motor Freight, Inc.  
Date 1/9/65  
By [Signature]  
In Presence of [Signature]

RECEIVED  
JAN 7 8 33 AM '65  
NEW ORLEANS, LA.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number) Truck Drivers and Helpers, Local Union 568	
4. Address (Street and number, city, zone, and State) 222 1/2 Milam Street, Shreveport, Louisiana	Telephone No.
5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization) International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America	
6. DECLARATION I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief. By David R. Richards January 4, 1965 Attorney for Charging Party	

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)  
U.S. GOVERNMENT PRINTING OFFICE: 1960-O-648170

GPO 908025

401 (6)

## APPENDIX

## 2. Basis of the Charge

Since on or about July 5, 1964, and at all times since that date, the employer, by and through its officers and agents, has at its Shreveport, Louisiana terminal made promises of benefits and threats of reprisal to dissuade its employees from supporting the charging union.

Since on or about July 5, 1964, and at all times since that date, the employer, by and through its officers and agents, has at its Shreveport, Louisiana terminal discriminated against members and supporters of the charging union in regard to wages, hours of work, and other terms and conditions of employment.

Since on or about July 5, 1964, and at all times since that date, the employer, by and through its officers and agents, has discriminated against and denied employment to Hayze Raymond because of his membership in and activities on behalf of the charging union.

Since on or about July 5, 1964, and at all times since that date, the employer has refused to bargain collectively with the charging union as the authorized bargaining representative of its Shreveport City employees and has unilaterally changed terms and conditions of employment of these employees without prior notice to or consultation with the charging union.

By the above acts and conduct and by other acts and conduct the employer has, through its officers and agents, restrained and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act.

SHREVEPORT  
AUTO 15TH REG.  
NEW ORLEANS, LA.  
JAN 7 8 33 AM '65

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

## CHARGE AGAINST EMPLOYER

FIRST AMENDED

INSTRUCTIONS: File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.		DO NOT WRITE IN THIS SPACE	
		Case No.	16-CA-2226
		Date Filed	January 20, 1965
1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT			
NAME OF EMPLOYER		NUMBER OF WORKERS EMPLOYED	
Red Ball Motor Freight, Inc.		Approximately 1,000	
ADDRESS OF ESTABLISHMENT (Street and number, city, zone, and State)		TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.)	
Post Office Box 10837 Dallas, Texas		Freight line	
		Identify principal product or service	
		Transportation	

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and \_\_\_\_\_ of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

See Appendix Attached

NATIONAL LABOR RELATIONS BOARD  
Case No. 16-CA-2226 OFFICIAL EXHIBIT NO. 11.1

U. S. DEPT. OF LABOR	{	Identified.....
		Received.....
		Rejected.....
Date of filing of charge: 1/13/65		
Date of filing of amended charge: 1/13/65		
Page 2		

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)

Truck Drivers and Helpers, Local Union 568

4. Address (Street and number, city, zone, and State)

222 1/2 Milam Street, Shreveport, Louisiana

Telephone No.

5. Full Name of National or International Labor Organization of Which It is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

International Brotherhood of Teamsters, Chauffeurs, Warehousemen  
and Helpers of America

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By David R. Richardson  
Representative of representative or person filing charge

January 19, 1965

(Date)

Attorney for Charging Party

(Title, if any)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)  
U.S. GOVERNMENT PRINTING OFFICE: 1963-O-646170

GPO 508625

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## APPENDIX

## 2. Basis of the Charge

Since on or about July 5, 1964, and at all times since that date, the employer, by and through its officers and agents, has at its Shreveport, Louisiana terminal made promises of benefits and threats of reprisal to dissuade its employees from supporting the charging union.

Since on or about July 5, 1964, and at all times since that date, the employer, by and through its officers and agents, has at its Shreveport, Louisiana terminal discriminated against members and supporters of the charging union in regard to wages, hours of work, and other terms and conditions of employment.

Since on or about July 5, 1964, and at all times since that date, the employer, by and through its officers and agents, has discriminated against and denied employment to Hayze Raymond because of his membership in and activities on behalf of the charging union.

Since on or about July 5, 1964, and at all times since that date, the employer has refused to bargain collectively with the charging union as the authorized bargaining representative of its Shreveport City employees and has unilaterally changed terms and conditions of employment of these employees without prior notice to or consultation with the charging union.

Since on or about July 19, 1964, and at all times since that date, the employer, by and through its officers and agents, has dominated and interfered with the operations of a labor organization, the Union of Transportation Employees, and has rendered assistance to said organization and has discriminated against opponents of said organization and has discriminated in favor of members and representatives of said Union of Transportation Employees by favoring the members of said organization with preferential treatment in wages, hours, and conditions of work and affording representatives of said organization preferential treatment in engaging in their organizing activities;

By the above acts and conduct and by other acts and conduct the employer has, through its officers and agents, restrained and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act.

176

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

## CHARGE AGAINST EMPLOYER

SECOND AMENDED

INSTRUCTIONS: File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.		DO NOT WRITE IN THIS SPACE	
		Case No.	16-CA-2226
		Date Filed	February 19, 1965
1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT			
Name of Employer		Number of Workers Employed	
Red Ball Motor Freight, Inc.		Approximately 1,000	
Address of Establishment (Street and number, city, zone, and State)		Type of Establishment (Factory, mine, wholesaler, etc.)	
Post Office Box 10837 Dallas, Texas		Freight line	
		Identify principal product or service	
		Transportation	

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and 8(a)(2)(B) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

See Appendix Attached

NATIONAL LABOR RELATIONS BOARD  
Case No. 16-CA-2226-1 EXHIBIT No. 1 (1)

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Is used  
Received  
Rejected

In the matter of Red Ball Motor Freight, Inc.  
Date 2/2/65 Witness                      Secretary                       
No. Pages 2

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)

Truck Drivers and Helpers, Local Union 568

4. Address (Street and number, city, zone, and State)

222 1/2 Milan Street, Shreveport, Louisiana

Telephone No.                     

5. Full Name of National or International Labor Organization of Which It is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and  
Helpers of America

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By David R. Richards  
(Signature of representative or person filing charge)

February 15, 1965  
(Date)

Attorney for Charging Party  
(Title, if any)

WILFUL FALSITY STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)  
U.S. GOVERNMENT PRINTING OFFICE: 1960-O-349170 GPO 908025

yc (1)

## APPENDIX

## 2. Basis of the Charge

Since on or about July 5, 1964, and at all times since that date, the employer, by and through its officers and agents, has at its Shreveport, Louisiana terminal made promises of benefits and threats of reprisal to dissuade its employees from supporting the charging union.

Since on or about July 5, 1964, and at all times since that date, the employer, by and through its officers and agents, has at its Shreveport, Louisiana terminal discriminated against members and supporters of the charging union in regard to wages, hours of work, and other terms and conditions of employment.

Since on or about July 5, 1964, and at all times since that date, the employer, by and through its officers and agents, has discriminated against and denied employment to Hayze Raymond because of his membership in and activities on behalf of the charging union.

Since on or about July 5, 1964, and at all times since that date, the employer has restrained and coerced its employees by denying to members of the charging union their contractual rights to grieve and have their grievances submitted to arbitration. By these acts and other acts of conduct the employer has restrained and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act.

## GENERAL COUNSEL'S EXHIBIT NO. 1(1)

COMPLAINT, HEARING ON OBJECTIONS,  
ORDER CONSOLIDATING CASES, AND  
NOTICE OF HEARING

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## 8.

Since on or about October 6, 1964, and continuing to date, Respondent Red Ball has discriminated and is discriminating against the following named employees at its Shreveport, Louisiana, terminal in regard to terms or conditions of employment, by the discriminatory assignment of overtime:

E. O. Ainsworth

B. W. Brown

G. Burks

Don Creamer

Billy Cryer

B. B. Daniels

R. T. Darrett

Joseph Fuller

Bud Giddens

Ronald Gremilion

Leroy Hicks

W. M. Kennedy

J. A. Lasyone

G. R. Lemoine

J. R. Martin

R. E. May

Milton Nash

Curtis Pilcher

J. T. Plunkett

Gus Rachel

W. E. Salley

S. J. Santone

C. W. Smiley

P. I. Thompson

Dewitt Turner

## 9.

Respondent Red Ball has discriminated and is discriminating, and continues to discriminate against its employees named above in Paragraph 8 because said employees joined or assisted the Teamsters Union or engaged in other union activity or concerted activity for the purpose of collective bargaining or other mutual aid or protection.

## 10.

Since on or about October 6, 1964, and continuing to date, Respondent Red Ball has interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act by the following acts and conduct:

(a) Respondent Red Ball by its supervisor and agent Barry W. (Red) Baker, on or about October 6, 1964, has threatened its employees with loss of overtime or other reprisals if they did not refrain from becoming members of the Teamsters Union or giving any assistance or support to it.

(b) Respondent Red Ball by its supervisor and agent Barry W. (Red) Baker, on or about October 6, 1964, promised its employees benefits if they supported the UTE Union.

## 11.

Since on or about October 6, 1964, and continuing to date, Respondent Red Ball has rendered, and is rendering, unlawful aid, assistance and support to Respondent UTE by the following acts and conduct:

(a) Since on or about October 6, 1964, and continuing to date, Respondent Red Ball has discriminated against its employees who are members of the Teamsters Union in regard to terms and conditions of employment by the discriminatory assignment of overtime.

(b) By its supervisor and agent Barry W. (Red) Baker, on or about October 6, 1964, threatened its employees with loss of overtime if they supported the Teamster Union.

(c) By its supervisor and agent Barry W. (Red) Baker, on or about October 6, 1964, promised its employees benefits if they supported the UTE Union.

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By the acts described above in Paragraphs 8, 9, and 10, and by each of said acts, Respondent Red Ball did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, and thereby did engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

By the acts described above in Paragraph 11, and by each of said acts, Respondent Red Ball did dominate or interfere with the function or administration of a labor organization, or contributed financial or other support to it, and thereby did engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(2) and Section 2(6) and (7) of the Act.

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GENERAL COUNSEL'S EXHIBIT NO. 7

September 9, 1964

All Shreveport Red Ball Employees:

This letter is in reply to the letter of the lawyer for the Teamsters. I am the attorney for the Union of Transportation Employees and will represent you in bargaining with the company on your seniority rights when the Union of Transportation Employees wins this election;

Mr. Wells is absolutely right in his statement that there has been no agreement on seniority. He does not have to agree, he knows that under the Teamsters' contract, Article 5, Section 6(b)(2), any employees transferring under the Teamsters contract go to the bottom of the seniority list. It is already controlled by the Teamsters contract. Even if seniority is dovetailed, you know a majority of UTE employees will go to the bottom of the board should the Teamsters win.



When the Union of Transportation Employees wins the election, the Teamsters Union will have no bargaining rights and no say-so at all. You can rest assured that the Union of Transportation Employees will never agree that its members will go to the bottom of any seniority list and that your seniority will be respected and protected against all others. Do not be fooled by long, legal, complicated letters. This is a plain statement of the position of the Union of Transportation Employees.

I will be glad to answer any questions.

Sincerely,

F. Lynn Estep, Jr.  
Attorney for the  
Union of Transportation Employees

FLEJr.:cb

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GENERAL COUNSEL'S EXHIBIT NO. 9

November 27, 1964

To: All Red Ball Dock and City Employees  
Shreveport, Louisiana

Gentlemen:

Let me solicit your vote in the Wednesday election for the Union of Transportation Employees. I say this because I am a practical man and want to show you the difference in take-home pay averages under the U.T.E. contract in comparison with the Teamster's contract. These are weekly averages computed by our machines in Dallas.

<u>Teamster's Contract</u>	<u>Week Ending 11-19</u>
New Orleans	\$138.01 average
Shreveport	130.85 average
Memphis	129.47 average
<u>U.T.E. Contract</u>	<u>Week Ending 11-19</u>
Shreveport	\$167.97 average

This true compilation is in direct answer to the statement made against this Company in the Teamster's letter of November 18th.

I ask you where this Company has ever misrepresented anything to you? I ask you what this Company could hope to gain by misrepresentation of facts to any employee? Red Ball has always been fair and honest in dealing with its employees, and this is true regardless of what union is, or is not, involved.

We know that you know that the U.T.E. contract is the best labor agreement. Vote your true convictions in the secret ballot election this Wednesday.

Sincerely,

/s/ E. B. Bailey

EBB/ja

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GENERAL COUNSEL'S EXHIBIT NO. 10

WESTERN UNION  
TELEGRAM

440A CST DEC 1 64 NSA055 LA035

L LLA064 NL PD LOS ANGELES CALIF 30

ALL SHREVEPORT CITY AND DOCK EMPLOYEES

RED BALL MOTOR FREIGHT INC 1214 AIRPORT DR SPORT  
MY PLANNED VISIT WITH YOU YESTERDAY WAS DISAPPOINTEDLY INTERRUPTED BY FLIGHT SCHEDULES AND BUSINESS HERE ON THE WEST COAST I WOULD LIKE FOR ALL OF YOU TO KNOW THAT MR BAILEY EXPRESSED MY FEELINGS WITH REFERENCE TO THE UNION CONTRACTS AND I SUPPORT HIM 100 PERCENT I DEEPLY APPRECIATED THE VOTE IN THE LAST ELECTION AND HOPE THIS NEXT ONE WILL BE EVEN MORE IN FAVOR OF THE UTE CONTRACT  
SINCERELY

HENR ENGLISH PRESIDENT.

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**NATIONAL  
MASTER FREIGHT  
AGREEMENT  
and  
SOUTHWESTERN AREA**

Local Cartage  
Supplemental Agreement  
Covering Employees of

**PRIVATE, COMMON,  
CONTRACT**

and  
**LOCAL CARTAGE  
CARRIERS**

for the period of  
**FEBRUARY 1, 1964**

to  
**MARCH 31, 1967**

\* \* \* \*

**ARTICLE 5.**

**Section 3.**

- \* \* \* \*
- (a) In the event that the Employer absorbs the business of another private, contract or common carrier, or is a party to a merger of lines, the seniority of the employees absorbed or affected thereby shall be determined by mutual agreement between the Employer and the Unions involved.

In the application of this provision the following general rules shall apply:

Merger, purchase, acquisition, sale, etc.

- (1) If both carriers involved are solvent then the seniority lists of the two Companies should be dovetailed so as to create a Master Seniority List based upon total years of service with

either Company. This is known as dovetailing in accordance with years of seniority.

\* \* \* \*

# **ARTICLE 53.**

## **Wages and Hours**

### **Section 1.**

The guaranteed work week shall be forty (40) hours per week, five (5) consecutive days with a daily guarantee of eight (8) hours per day, time and one-half (1 1/2) after eight (8) hours per day and/or forty (40) hours per week.

## **Work Week**

Time and one-half the applicable hourly rate of pay shall be paid for all work performed on the sixth (6th) day, and double time for the seventh (7th) day.

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# **UNION OF TRANSPORTATION EMPLOYEES Charter No. 102870 AGREEMENT**

**UTE  
March 14, 1964**

\* \* \* \*

# **ARTICLE 11**

## **Seniority**

\* \* \* \*

**Section 4.** The rights of seniority shall be recognized in all seniority groups or classifications with respect to runs or job

assignments, and in all cases of reduction of forces and recalls to the service. In the case of promotions, fitness and ability being equal, seniority shall prevail. An employee promoted or transferred to a supervisory position with the EMPLOYERS or the UNION shall retain and accumulate seniority in his immediate former classification but cannot exercise this seniority unless he is disqualified from his supervisory or excepted position or unless his position is abolished.

\* \* \* \*

### ARTICLE 13

#### Bulletins and Assignments

\* \* \* \*

Section 2. Bidding procedures are:

\* \* \* \*

(c) The EMPLOYER will make the assignments within five (5) days after the bidding has closed.

\* \* \* \*

A senior employee has the right to bump a junior employee whenever he loses his run or job through no fault of his own provided these rights are exercised within ten (10) days of the time he loses his assigned run or job. An employee losing his job because of a bump bid or through no fault of his own will take an unassigned run or job within his classification until such time that he exercises his seniority. He will not be called to work until all available employees within his classification have been used.

\* \* \* \*

### ARTICLE 14

#### Transfers

Section 1. Employees may transfer from one classification or seniority division to another by making written application to the EMPLOYERS with a copy to the UNION. The application shall contain

information setting out the run or job then being held, the reason for such transfer, the run or job to which he desires to be transferred, together with his qualifications. The seniority of employees making a transfer shall begin at the time and on the date he begins work in the new classification after approval of the transfer. No transfer shall become effective until agreed in writing between the UNION and the EMPLOYER. Where an employee transfers from one classification to another, he may accumulate seniority in only one classification but will retain the seniority accumulated in any previous classification.

Section 2. When an employee effects a transfer from one classification to another as provided for in Section 1 above and then is subject to lay off due to reduction in force in the classification to which he transferred, he will be allowed to exercise his seniority in the classification from which he transferred. However, when the EMPLOYER recalls those employees on lay off it will be mandatory for said employee to return to the classification from which he was laid off. Under no circumstances will an employee be allowed to exercise his seniority between classifications.

## ARTICLE 15

### Leave of Absence

Section 1. Any employee desiring a leave of absence from his EMPLOYER shall secure written permission from both the UNION and the EMPLOYER. Failure to comply with this provision shall result in the complete loss of seniority rights. The period of time for which a leave may be granted to any employee shall be by agreement between the UNION and the EMPLOYER, but in no case longer than six (6) months. An employee on leave who enters the services of another EMPLOYER or who shall enter into a business of his own without



written authority from the UNION and the EMPLOYER shall forfeit all seniority rights.

Section 2. The EMPLOYER will restrict temporary layoffs to not less than twenty-four (24) hours unless no other employees are available for duty. Employees must obtain permission to be absent from duty except in cases of emergency involving death, sickness and accident and then the EMPLOYER must be notified as soon as possible.

Section 3. Employees who enter the armed services of the United States will be considered on leave of absence and shall accumulate seniority during the time of service with the Government; provided that the employees notify their respective EMPLOYERS of their intention to return to the service of the EMPLOYER within sixty (60) days after having received an Honorable Discharge; provided further that the employee shall be physically fit and mentally capable of performing his services. The rights granted to employees under the terms of this provision shall be in accordance with federal regulations governing same and in the event of a conflict between the terms of this provision and the federal regulations, the federal regulations shall prevail.

Section 4. It will not be considered a break in service while an employee is on approved leave of absence.

\* \* \* \*

## ARTICLE 28

### Reduction in Forces

Section 1. Any reduction in forces due to slack business or insufficient work will be in accordance with seniority rights. Employees laid off under this provision shall receive one full day's pay on the last day he reports for work.

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## CHARGING PARTY'S EXHIBIT NO. 3

RED BALL MOTOR FREIGHT, INC.

1214 AIRPORT BLVD. • P. O. Box 7035 • SHREVEPORT, LOUISIANA 71107

November 13, 1964

All Red Ball Dock and City Employees  
Shreveport, Louisiana

Gentlemen:

We have received a notice from the National Labor Relations Board ordering a new election on the question of which contract you men prefer, UTE or Teamster. This Order was not based on any interference with your rights or illegal conduct on the part of the Company. It is obvious that Red Ball's position on this election is very important in negotiating your rights.

We think your seniority is important and we are going to protect your rights in negotiating; however, it is obvious that there is plenty of work for everyone.

Both Unions are restricted by the United States Government in these negotiations. We wish to assure you of fair representation and negotiations on the part of your Company.

The big question is which contract will apply. We think you have all worked side by side long enough to know in your own minds that the UTE contract assures all of you of more take home pay. This Company is not able to pay one and one-half times the hourly rate to move freight. The Teamster contract restricts you to eight hours per day, and 40 hours per week by its penalty time provision. Those of you who have worked at the Abbie Street dock know this.

We think you should stick by your own convictions and vote for the UTE contract as you did before so your families can enjoy the extra take home pay.

Do not fall for any threats regarding this election from anyone. Your Company is the only one that can assure you of anything. It is unfortunate that it is necessary that you have to vote again on this question. This is not the fault of the Company.

We will keep you informed on this new election. If you have any question, please contact me.

Sincerely,

/s/ E. B. Bailey

EBB/ja

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## CHARGING PARTY'S EXHIBIT No. 4

LAW Offices of  
MULLINAX, WELLS, MORRIS & MAUZY

September 4, 1964

Teamsters Local 568  
222 1/2 Milam Street  
Shreveport 23, Louisiana

Gentlemen:

You have advised that some propaganda has been circulated in connection with the forthcoming election to the effect that UTE and Red Ball have already agreed that if UTE wins the election Teamsters will go to the bottom of the seniority list.

I am aware of no such agreement, and, indeed, I am sure that there could be no such agreement. To the contrary, the "Agreement" dated September 1, 1964, between Red Ball, Southern Conference of Teamsters and UTE provides:

"After the determination and certification of the results of the election by the agency conducting said election, Red Ball covenants and agrees to recognize and abide by the collective bargaining agreement presently in effect with the union selected by the employees to represent them at Shreveport, Louisiana, and certified by the National Labor Relations Board. Red Ball agrees to bargain and negotiate with the union so selected on all collateral issues arising from the integration of employees and/or the closing of the Abbey Street terminal." (Emphasis added)

You will note that Red Ball agrees to bargain about these matters with the winning union; that is, the agreement is to bargain in the future. This of course negatives any idea of any agreement having already been made with the UTE as to the placement of employees.

## CHARGING PARTY'S EXHIBIT No. 4

Whichever union wins the election will be under a duty of representing fairly all the employees in the bargaining unit. See In re Miranda Fuel Co., 140 NLRB 181, where it was held:

" . . . that a statutory bargaining representative and an employer also respectively violated Section 8(b)(2) and 8(a)(3) when . . . upon the basis of an unfair classification, the union attempts to cause an employer to derogate the employment status of an employee."

Whichever union wins the present election will be under a duty of fair representation pursuant to the requirements of the Labor Management Relations Act. Moreover, pursuant to the Landrum-Griffin Act, the union which wins this election must afford equal rights to every member in accordance with the requirements of Section 101(a)(1) of that Act, which provides:

"Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws."

If the integration of seniority lists by bargaining between the winning union and Red Ball follows the procedure approved by the United States Supreme Court in its latest decision on the matter, Humphrey v. Moore, 11 L. Ed. 2d 370 (Jan. 1964), it will be by "decision to integrate lists upon the basis of the length of service at either company." (Emphasis added). The Supreme Court goes on to state:

" . . . it is a familiar and frequently equitable solution to the inevitably conflicting interests which arise in the wake of a merger or an absorption such as occurred."

## CHARGING PARTY'S EXHIBIT No. 4

The Court notes many state cases approving integration on such basis, and cites with approval, 11 L. Ed. 2d370 at 381:

"Integration of seniority lists should ordinarily be accomplished on the basis of each employee's length of service with his original employer . . . ." Kahn, Seniority Problems in Business Mergers, 8 Industrial and Labor Relations Review 361, 378.

Summarizing, it is our opinion that by the quoted agreement of September 1, 1964, two matters are clear, viz: (1) that no agreement could yet have been made by Red Ball with UTE as to the seniority allocation, for this is a matter yet to be determined, and (2) whichever union wins the election will be under duties imposed by the Federal Labor Laws as set out above.

If you desire any further information as to the legal consequences of the present agreements we shall be glad to advise further.

Sincerely,

MULLINAX, WELLS, MORRIS & MAUZY

By /s/ L. N. D. Wells, Jr.

LNDW/dmc

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## TRIAL EXAMINER'S DECISION

## Statement of the Case

Upon charges filed on January 5 and 21, 1965<sup>1/</sup> by Truck Drivers and Helpers, Local Union 568, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, referred to herein as Local 568, the General Counsel issued a consolidated complaint in Cases Nos. 16-CA-2226 and 16-CB-249 against Red Ball Motor Freight, Inc., referred to herein as Red Ball, and the Union of Transportation Employees, referred to herein as UTE. The complaint alleges that Red Ball violated Section 8(a)(1), (2), and (3) of the Act, and that UTE violated Section 8(b)(1)(A) of the Act. Both Respondents deny the commission of any unfair labor practices.

In Case No. 16-RM-273, the Regional Director for the Sixteenth Region on June 4, 1965, issued a Report on Objections and Challenged Ballots following the second election conducted in that case pursuant to an agreement for consent election entered into by Local 568, Red Ball and UTE. In his Report he found that certain objections to the election filed by Local 568 raised substantial and material issues which could be best resolved after a hearing, and ordered that Case No. 16-RM-273 be consolidated with 16-CA-2226 and 16-CB-249 "for the purposes of hearing, ruling, decision, and resolving of factual issues by a Trial Examiner" and that thereafter Case No. 16-RM-273 be severed and remanded to the Regional Director for further action in accordance with Section 102.62(a) of the Board's Rules and Regulations and the consent election agreement entered into by the parties.

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<sup>1/</sup> The charges were originally filed in the Fifteenth Region where they were assigned Cases Nos. 15-CA-2589 and 15-CB-730, respectively. They were transferred to the Sixteenth Region by the General Counsel and then assigned their present numbers.

This consolidated proceeding was heard before the undersigned Trial Examiner in Shreveport, Louisiana, on July 13, 14, and 15, 1965. At the close of the hearing oral argument was waived, and the parties were given leave to file briefs, which all parties filed.

Upon the entire record in this case and from my observation of the witnesses, I make the following:

### Findings and Conclusions

#### I. The business of the Respondent

##### Red Ball

Red Ball Motor Freight, Inc., a Delaware corporation, maintains its principal office and place of business at Dallas, Texas, and has terminals at Dallas, Texas, Shreveport, Louisiana, and elsewhere in Alabama, Arkansas, Colorado, Louisiana, Mississippi, and Texas where it engages in the shipping and transportation of general freight and cargo by motor truck in interstate commerce. During the past 12 months, a representative period, Red Ball performed services valued in excess of \$50,000, in connection with the transportation of commodities to its freight terminals in Texas from points outside the State of Texas. I find, and Red Ball admits, that Red Ball is an employer engaged in commerce within the meaning of the Act and that assertion of jurisdiction is warranted.

#### II. The labor organizations involved

Union of Transportation Employees and Truck Drivers and Helpers, Local Union 568, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America are labor organizations within the meaning of Section 2(5) of the Act.

#### III. The alleged unfair labor practices and the objections to the election

##### A. The issues

With respect to Case No. 16-CB-249, the complaint alleges that before the first election UTE restrained and coerced employees of Red

Ball in violation of Section 8(b)(1)(A) of the Act by threatening to deprive certain of them of seniority rights and to withhold fair representation, while promising other employees that they would be placed at the top of the seniority list if UTE should win the first election.

As to Case No. 16-CA-2226, the complaint alleges that Red Ball, through its supervisor Baker on October 6, 1964, threatened employees with loss of overtime work if they did not refrain from becoming members of, assisting or supporting Local 568 and promised benefits to employees if they supported UTE. The complaint alleges that thereafter Red Ball discriminatorily denied overtime work to members or adherents of Local 568. The complaint charges that Red Ball thereby violated Sections 8(a)(1), (2), and (3) of the Act. The issues raised by the objections to the second election in Case No. 16-RM-273 referred by the Regional Director for hearing arise out of the same facts and are essentially the same as the issues in 16-CA-2226. Both the Employer and UTE deny the charges against them and urge that the objections to the second election be overruled.

**B. Background facts**

In 1962, Red Ball purchased Couch Motor Lines, Inc., an independent trucking company, and changed its name to Red Ball Motor Freight (Southeast) Inc., which continued to operate as a wholly-owned subsidiary of Red Ball from the former Couch terminal in Shreveport, Louisiana, known as the Abbey Street terminal. There were approximately 30 local drivers and dock employees employed there who were represented by Local 568. Respondent Red Ball also continued to operate a separate terminal in Shreveport known as the Airport Drive terminal at which approximately 50 local drivers and dock employees were employed who were represented by UTE. UTE also represented the employees at a number of Red Ball's other terminals, while the Teamsters Union represented employees at one other Red Ball terminal.

On August 20, 1964, Charles D. Mathews, vice-president and general counsel of Red Ball wrote both Unions to advise them that the

Interstate Commerce Commission had approved the merger of Red Ball Motor Freight (Southeast), Inc., with Respondent Red Ball, and that the Abbey Street terminal would be closed on September 15, 1964, with all company operations in Shreveport thereafter to be consolidated and conducted from the Airport Drive terminal. Mathews offered to meet with the Unions, jointly or separately, to discuss the effects of the consolidation upon the employees.

Thereafter the parties met and on September 1, 1964, entered into an agreement for the purpose of settling the issues arising from the closing of the Abbey Street terminal. The agreement provided that following the merger of the terminals, Red Ball would file a representation petition, and all parties would enter into a consent election agreement to obtain an election to determine which Union would represent the local drivers and dock employees at the Airport Drive terminal following the merger.<sup>2/</sup> The parties also agreed that after the date of certification by the Board pursuant to the consent election, the employees at the Airport Drive terminal would be covered by a single contract, and Red Ball agreed that it would recognize and abide by the collective-bargaining agreement then in effect with the union selected by the employees and that it would "bargain and negotiate with the union so selected on all collateral issues arising from the integration of employees and/or the closing of the Abbey Street terminal."

Pursuant to the agreement the petition in Case No. 16-RM-273 was filed, and on September 1, 1964, the parties entered into a consent election agreement providing for an election to be held among the local drivers and dock employees at both terminals on September 10, 1964, prior to the closing of the Abbey Street terminal. The consent election agreement provided that the decision of the Regional Director with respect to post-election matters would be final and binding.

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<sup>2 /</sup> Line drivers, mechanics, and clerical employees were not covered by the agreement and are not involved in this proceeding.

In the September 10 election 37 ballots were cast for Local 568, 39 for UTE, and 2 were challenged. Thereafter, Local 568 filed timely objections to conduct affecting the election. On September 21, 1965, the Abbey Street terminal closed. Its operations were merged with those at the Airport Drive terminal, and all the local drivers and dock employees at Abbey Street were transferred to the Airport Drive terminal. As a result of the pendency of the challenged ballots and the objections, the identity of the representative of the employees and of the contract applicable to them remained undetermined.

While Red Ball carried on its merged operations as described in material detail below, the Regional Director preceded with his investigation of the objections and challenges arising out of the September 10 election. On October 5, 1964, the Regional Director issued his Report on Challenged Ballots and Notice of Hearing on Objections, sustaining the two challenges, but directing a hearing as to the issues raised by three of the objections filed by Local 568. The hearing was held on October 20, and 21, 1964, and on November 10, 1964, the Regional Director issued his Report on Objections finding merit in one of the objections, setting the election aside, and directing a second election.<sup>3/</sup>

In the second election, held on December 2, 1964, 36 ballots were cast for Local 568, 38 for UTE, 1 for neither Union and 6 were challenged. Local 568 again filed objections to conduct affecting the election. On June 4, 1965, the Regional Director issued his Report on Objections and Challenged Ballots, sustaining the six challenges, overruling all but three of the objections and directing a hearing, as set forth above, with respect to three objections which contain substantially

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3/ The Regional Director found it unnecessary to decide the merits of the remaining objections. The grounds on which the election was set aside later became the basis of the charge and complaint in Case No. 16-CB-249.



the same allegations as the complaint in Case No. 16-CA-2226.<sup>4/</sup>

C. The contracts

As indicated both Unions had collective-bargaining agreements with Red Ball at the time of the merger, and by the agreement of September 1, the contract of the victorious union was to apply following certification to all the employees of the merged terminal with collateral issues arising out of the merger and the closing of the Abbey Street terminal to be negotiated.

When it developed that the representation question remained unsettled at the time of the merger, Red Ball determined not to change the terms and conditions of employment of any of the employees until a final determination of the representative. As a practical matter this meant that the employees now merged into a single operating group continued to work under the terms and conditions of employment of whichever contract had governed them prior to the merger. The different provisions of the contracts pertaining to hours and overtime gave rise both to campaign issues and operational problems directly related to the issues in this proceeding.

The UTE contract provides in Articles 24 and 25 for a daily guarantee of 8 hours work and a weekly guarantee of 42 hours work. It also provides that no employee shall be required to work more than

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4 / The objections referred for hearing were:

4. The Employer, by and through its officers and agents, threatened discrimination against members of and persons represented by Teamsters Local 568 in the allocation of overtime on the Shreveport Dock.
5. The Employer by and through its officers and agents discriminated against members of and persons represented by Teamsters Local 568 in the allocation of overtime on the Shreveport Dock.
6. The Employer by and through its officers and agents promised benefits, including increased earnings, to employees in an effort to induce them to support the UTE in the representation election.



10 hours a day but that premium pay at the rate of time and a half will be paid only for all hours beyond 10 worked in any one day.<sup>5/</sup> There is no provision in the UTE contract for premium pay for weekly overtime for the sixth or seventh work day as such.

The Local 568 contract provides in its Article 53 for a guaranteed work week of 40 hours to be worked in 5 consecutive 8 hour days, with time and a half pay for all hours worked after 8 in one day or 40 in a week. The agreement also provides for time and a half pay for all work performed on the 6th day and double time on the 7th day.

Pay rates provided under the two agreements are substantially the same but with some differences.<sup>6/</sup>

#### D. The Red Ball Shreveport operations

Before the merger, the Abbey Street terminal handled freight to and from destinations within the old Couch operating authority, basically to the east and south of Shreveport. The Airport Drive terminal handled freight to and from the north and west of Shreveport. The Abbey Street terminal was housed in an old building which had little special freight handling equipment or facilities. At Abbey Street, dock employees unloaded freight from trailers or trucks onto carts which they immediately pushed to outgoing trailers and unloaded in them. Because dock facilities were limited, outgoing trailers had no regularly assigned locations, so that employees had to ascertain the location of

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<sup>5/</sup> The overtime provisions of the Fair Labor Standards Act do not apply to Red Ball, 29 U.S.C. §213(b)(1).

<sup>6/</sup> The Local 568 contract provides for separate driver and checker classifications each of which was paid \$3.14 an hour during the period material herein. The UTE contract provides for a combined checker-driver classification with the same rate after 12 months service. However, under the UTE agreement employees in this classification started at \$2.84 and received 15 cent increases after 6 months and a year of service. The Local 568 contract also provides for a dockman classification paid at the rate of \$2.98 an hour. The comparable UTE classification is nondriver-helper paid at the rate of \$3 an hour after 12 months service, with a starting rate of \$2.70 an hour and 15 cent increases after 6 months and a year of service.

the appropriate outgoing trailer at the dock for each load. Most of the dock employees were classified as checkers, and in unloading freight, one checker generally was assigned to a truck.

At Airport Drive a continuous chain called a tow-veyor is installed on the dock. After unloading freight onto carts or buggies, dock workers attach them to the tow-veyor which automatically pulls them around the dock until they are removed. At Airport Drive a single checker works with several trucks or trailers at a time checking incoming loads against bills on the basis of information supplied by other dock employees who place each incoming shipment on a buggy and attach it to the tow-veyor. As they are loaded, the buggies are marked with coded designations to indicate the outgoing trailers on which their contents are to be placed.

Because the Airport Drive terminal can accommodate many more trucks and trailers than Abbey Street, outgoing trailers have regularly assigned platform positions according to destination where they are parked for loading, and dock employees in time become familiar with these locations. At the appropriate locations, dock employees detach the buggies from the tow-veyor and according to their code markings, wheel them onto the outgoing trucks or trailers and unload them. The operations at the Airport Drive terminal were substantially the same before the consolidation as after.

Because the territories covered by the two terminals were different prior to the consolidation, both groups of employees were required to become familiar with new destinations and points of origin for freight following the merger. The former Abbey Street employees also were required to become familiar with the method of handling freight of the Airport Drive terminal.

The job classifications in use at the two terminals were slightly different, as noted above, and were preserved after the merger. In neither case were the classifications entirely descriptive of the duties

performed by the various employees. Both groups of employees contain those whose duties were principally local driving.<sup>7/</sup> Drivers in both groups were assigned predominately either to four-wheel pickup trucks, referred to as bobtails, or tractor-trailers. Bobtail drivers pick up and deliver smaller loads. Some of them travel over regular routes. Trailer drivers pick up and deliver larger loads up to and including full trailer shipments, usually on spot assignments. Bobtails, unlike tractor-trailers, are equipped with two-way radios so that their drivers can readily contact dispatchers for instructions while away from the terminal. Both bobtail and trailer drivers regularly perform dock work when at the terminal while waiting for the loading of their trucks to be completed, and upon their return to the terminal either before the end of a shift or on overtime.<sup>8/</sup>

At Abbey Street employees classified as checkers and at Airport Drive employees classified as checker-drivers checked incoming shipments of freight against bills. Because fewer employees are required to check at Airport Drive, since the merger not all the former Abbey Street employees classified as checkers have continued to check. Those who have not, while retaining their classification and pay rates, do the other dock work described above, along with two employees who were classified as dockmen at Abbey Street and a greater number of employees who were classified as nondriver-helpers at Airport Drive.

The Airport Drive terminal is open 24 hours a day. Inbound shipments arrive there around the clock, but the basic workday starts around 2 a.m. and continues until 7:30 or 8:30 p.m., with staggered shifts. The early morning crews consist largely of checkers and dock workers who unload the inbound trailers that have arrived during the night, and distribute their loads among local trucks to be delivered to their ultimate destinations by the local drivers. Most of the drivers start to

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<sup>7/</sup> At Abbey Street such employees were classified as drivers. At Airport Drive before the merger they were classified as checker-drivers.

<sup>8/</sup> A few employees, classified as drivers, are called hostlers and work around the terminal yard spotting trucks, tractors and trailers at appropriate locations at the dock and in the yard.

arrive a few hours later and continue to report at hourly intervals for several hours. The workload at the terminal varies throughout the day according to the volume of incoming loads from other terminals and the outbound shipments brought back to terminal by the local drivers. The determination as to whether employees are required to work overtime as their quitting time nears depends upon the expected capacity of the remaining employee complement to handle the anticipated workload. The heaviest need for overtime generally occurs towards the close of the basic workday.

E. Case No. 16-CB-249--UTE conduct before the first election

1. The facts

During the period between the execution of the consent election agreement and the first election, UTE held meetings on August 30, September 3, and September 8 at which the election and issues in the election were discussed. Seniority was one of the principal issues of importance discussed at these meetings. On September 8, a series of meetings were held by UTE in a room at the Airport Drive terminal, attended by UTE President Scruggs, UTE Business Agent House, and small groups of Airport Drive employees.<sup>9/</sup> Scruggs brought with him to this meeting two seniority lists which he posted on the wall. The first list placed all the UTE employees above all the Teamster employees.<sup>10/</sup> The second list showed the names of all employees at both

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<sup>9/</sup> The Abbey Street terminal was still in operation on this date, and it appears that no Abbey Street employees attended these meetings.

<sup>10/</sup> At the hearing the parties and all witnesses referred to all the original Airport Drive employees as UTE employees and all the former Abbey Street employees as Teamster employees. For convenience I have followed this convention in writing this Decision. In fact, all the original Airport Drive local drivers and dock employees were members of UTE both before and after the merger and were represented by UTE before the merger. All Abbey Street local drivers and dock employees were members of Local 568 before and after the merger and were represented by Local 568 before the merger. Thus, the designation of employees as UTE or Teamster herein denotes geographical location, unit, and representation before the consolidation of the terminals, and membership both before and after the consolidation.



terminals arranged in a single list according to their original dates of hire, referred to by the parties as dovetailed seniority.<sup>11/</sup> At these meetings Scruggs was asked to explain how seniority would be determined after the election. In his answers Scruggs referred to the two lists. In an least one of these small meetings he told Airport Drive employees that Red Ball would be required to bargain with the union which won the election which meant that if UTE won, the first list would govern seniority, and that if UTE lost the election, the second list would govern seniority. He added that if the Airport Drive employees wanted to retain their seniority, they should vote for UTE. Scruggs also stated that he had been told by Red Ball's Shreveport Manager Bailey that after the terminals merged, the consolidated operation could be run with 60 or 61 men which would mean that approximately 15 men would be laid off after the merger. Scruggs showed one employee that he stood twenty-eighth on the list which gave preferential seniority to the UTE employees and fifty-third on the list which ranked the employees strictly by total length of service at either terminal.<sup>12/</sup>

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<sup>11/</sup> There were approximately 15 or 16 Teamster employees who had greater length of service than any UTE employee. They appeared at the top of this list. At the bottom of the list appeared a number of UTE employees who had relatively short service with Red Ball.

<sup>12/</sup> It appears that seniority alternatives, depending upon the outcome of the election, were also discussed at the earlier UTE meetings, but neither Ferrell and Salley who testified as to these meetings was clear in his recollection as to what was said at the earlier meetings. With respect to the September 8 meeting, I have credited the testimony of Ferrell and Salley. UTE Business Representative House testified contrary to them that he and Scruggs in response to questions about seniority only told employees to keep in mind that seniority would have to be negotiated and did not say that the Teamster employees would go to the bottom of the list if UTE won the election. Initially House testified that he could recall that only the list showing dovetailed seniority was posted in the room during the meetings. Ultimately he conceded that both lists were brought by Scruggs and posted in the room, although he continued to insist that the list showing preferential seniority for UTE employees was not described as depicting what would happen if UTE won the election. House lacked candor in his testimony concerning the September 8 meetings, and I do not credit it where it conflicts with Ferrell and Salley.

On September 9, the day before the first election, a letter over the signature of UTE's Attorney Estep was distributed by UTE to all Shreveport Red Ball employees. By its terms the letter was in reply to a letter previously distributed by Local 568 over the signature of its attorney to all Shreveport Red Ball employees. <sup>13/</sup>

After a paragraph which sought to answer the earlier Local 568 letter, the UTE letter concluded:

When the Union of Transportation Employees wins the election, the Teamsters Union will have no bargaining rights and no say-so at all. You can rest assured that the Union of Transportation Employees will never agree that its members will go to the bottom of any seniority list and that your seniority will be respected and protected against all others. Do not be fooled by long, legal, complicated letters. This is a plain statement of the position of the Union of Transportation Employees. (Emphasis in original). <sup>14/</sup>

2. Concluding findings with respect to Section 8(b)(1)(A).

A Union is of course free to make campaign pledges or promises in the course of a representation campaign with respect to postelection conduct which would itself be lawful, such as a promise to seek or even to obtain wage increases for all employees in the unit. However, it cannot make a threat, reasonably calculated to have an effect on the listener, to take subsequent action which would be unlawful, regardless of the Union's ability unilaterally to carry out the threat. United Furniture Workers of America, Local 309 (Smith Cabinet Manufacturing Company Inc.), 81 NLRB 886; Local 511, St. Louis Offset Printing Union, AFL-CIO, (Mendle Press, Inc.) 130 NLRB 324. Although the cited cases

<sup>13/</sup> The letter distributed by Local 568 stated the opinion that after the election the certified union would be required to fulfill its duty of fair representation in negotiating with respect to seniority with Red Ball and that the negotiation of a provision integrating or "dovetailing" the seniority lists on the basis of actual length of service at either terminal would satisfy this duty.

<sup>14/</sup> The letter also stated in the previous paragraph: "Even if seniority is dovetailed, you know a majority of UTE employees will go to the bottom of the board should the Teamsters win."



involve threats, it makes no material difference whether a threat or a promise is made. What is critical is whether the action either threatened or promised is one which could be lawfully taken. <sup>15/</sup>

Here, UTE promised the UTE employees that if UTE was selected as the representative at the merged terminal, they would be placed above all Teamster employees <sup>16/</sup> on the seniority list. At the same time, as often the case, the promise necessarily carried with it the threat to disfavor Teamster employees. At the September 8 meetings and in the letter distributed on September 9 UTE indicated that it expected the preference to be obtained through negotiation with Red Ball.

Although UTE was not in a position unilaterally to implement its promise-threat, the utilization of the two seniority lists at the September 8 meetings to demonstrate graphically the difference between dovetailing and preferential seniority for UTE employees, the references to possible layoff, which insofar as the record shows were unfounded, and the unequivocal language of the September 9 letter which was distributed to the employees at both terminals all compel the conclusion that it was reasonably intended to have an effect on the employees to whom it was directed. <sup>17/</sup> Thus, it was necessary to determine whether the action promised and threatened by UTE was itself unlawful.

<sup>15/</sup> Section 8(b)(1)(A) proscribes a "threat of reprisal or force or promise of benefit" International Brotherhood of Electrical Workers v. N.L.R.B., 341 U.S. 694, at 701-703; N.L.R.B. v. Drivers, Chauffeurs, Helpers, Local Union No. 639, 362 U.S. 274, at 284; National Maritime Union, 78 NLRB 971, enf'd. 175 F. 2d 686 (C.A. 2), cert. den., 388 U.S. 954.

<sup>16/</sup> The last paragraph of the letter, quoted above, clearly repeats the promise made by Scruggs the previous day, particularly in the context of the September 8 meetings which preceded it. It does not appear, and no claim has been made, that either agreement between Red Ball and the Unions provided a method for determining seniority in the event of a merger between a terminal under UTE contract with one under Teamster contract.

<sup>17/</sup> See Vickers Incorporated, A division of the Sperry Rand Corporation, 152 NLRB No. 84. Although seniority was to be negotiated, the determination of relative seniority rights among employees is often of more concern to the employees than to the employer and at times in the trucking (continued)

At first blush, particularly in view of the use of the word "members" in the September 9 letter, it would appear that the action promised by UTE was to base preferential seniority upon membership in the UTE. However, because of the identity between membership, prior representation, and premerger geographical and corporate differences, it is not possible to say that the proposed preference was based on union membership rather than upon the other factors or the pure self-interest of the numerically dominant Airport Drive employees.<sup>18/</sup>

Nonetheless, the Board's decision in Miranda Fuel Company, Inc., 140 NLRB 181, enf. den., 326 F. 2d 172 (C.A. 2), requires that the inquiry not end at this point.

In Miranda a majority of the Board concluded that Section 8(b)(1)(A) of the Act "prohibits labor organizations, when acting in a statutory representative capacity, from taking action against any employee upon considerations or classifications which are irrelevant, invidious, or unfair," and that Section 8(b)(2) is violated "when, for arbitrary or irrelevant reasons or upon the basis of an unfair classification, the union attempts to cause or does cause an employer to derogate the employment status of an employee." 140 NLRB, at 185-186. In that case violations were found when, under pressure from some employees in the unit it represented, the union sought to have an employee's contract seniority forfeited first on one groundless basis and then on another basis in conflict with the contract.

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<sup>17/</sup> (Continued) industry has been considered a matter for union determination. Kahn, Seniority Problems in Business Mergers, 8 Ind. & Lab. Rel. Review 361, 362, 376. See e.g. the contract at issue in Pacific Inter-mountain Express Company, 107 NLRB 837, enf'd as mod. 225 F. 2d 343 (C.A. 8).

<sup>18/</sup> See Kahn, 8 Industrial and Labor Relations Review, op. cit. supra, at 376-377.

Thus, if it should be concluded here that UTE promised and threatened to take action in its statutory representative capacity against the former Abbey Street employees upon considerations or classifications which are irrelevant, invidious or unfair or to attempt to cause Red Ball to derogate the employment status of the former Abbey Street employees for arbitrary or irrelevant reasons or upon the basis of an unfair classification, it would follow that UTE violated Section 8(b)(1)(A) under the Smith Cabinet and St. Louis Offset Printing Union decisions, supra.

The division of employees into two groups for seniority purposes following a merger of two facilities is by no means inherently unfair regardless of surrounding circumstances. Indeed, there may be circumstances under which the integration of seniority lists into a single list based strictly upon total length of service would be deemed unfair. Thus, here, if the Abbey Street terminal had been insolvent and would have closed down but for the merger, it might well have been argued that the Abbey Street employees were fortunate to have any job prospects, and that it would have been unfair to permit them to gain an advantage over the employees of the Airport Drive employees which would result from a straight integration of lists.<sup>19/</sup> Likewise, if there were substantial differences in the operations, methods, or duties of the employees at the two facilities, a reasonable basis might have been demonstrated for giving seniority preference to the employees of one facility over those of the other following the merger.

Here, however, there is affirmative evidence to support the conclusion that the action which UTE proposed was in derogation of its obligation of fair representation. The timing and manner of the announcement of the promise, its coupling with the apparently unfounded spectre of impending layoffs, and the fact that UTE adopted a seniority policy before UTE had even become the representative of Abbey Street employees support the inference that UTE's promise to seek preferential seniority

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<sup>19/</sup> See Kahn, 8 Industrial and Labor Relations Review, op. cit. supra, at 372.

for the UTE employees was based upon its desire to assure continuation of its representative status at the terminal and was not conscientiously adopted in an effort to find a workable solution to an admittedly difficult problem.

Moreover, there is nothing in the evidence of the circumstances surrounding the merger to suggest a reasonable basis for the promised classification of employees for seniority purposes. Although the Airport Drive terminal was more modern and better equipped than the Abbey Street terminal, the duties and classifications of the employees at the two terminals, as described above, were for all practical purposes the same, and Red Ball considered two weeks a sufficient training period to familiarize the Abbey Street employees with the Airport Drive terminal following the merger. To be sure, it was necessary for the Abbey Street employees to become familiar with different operating methods as well as a new set of ultimate destinations for the shipments they loaded. But the Airport Drive operations were in many respects simpler than those at Abbey Street, and adjustments were necessary for the Airport Drive employees as well, who were also required to become familiar with ultimate destinations of shipments formerly handled at the Abbey Street terminal. It has not been argued and I cannot find that there was justification for proposing preferential seniority in any asserted differences between the duties of the two groups of employees or the operations of the two terminals.

Likewise, there is no indication that the future employment prospects of the two groups would have been materially different but for the merger so as to justify different treatment for them, nor is there evidence of likelihood that the business formerly conducted at the Abbey Street terminal was likely to be abated by the prospective merger. Moreover, there is no evidence that the geographic, unit, or corporate differences between the terminals before the merger furnish any reasonable basis for seeking a seniority preference for the UTE employees following the merger. One may speculate as to other possible justifications for discrimination of the kind here promised, but the short of it is that there is no evidence



in the record to rebut the inference that UTE proposed to classify unfairly the employees at the merged terminal.

It is true that "A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents," but to satisfy the statutory obligation, the representative must nonetheless "make an honest effort to serve the interests of all of those members [of an appropriate unit] without hostility to any," and the representative's discretion is "subject always to complete good faith and honesty of purpose in the exercise of its discretion." Ford Motor Co. v. Hoffman, 345, U.S. 330, 337.

In my view, the promised action in this case does not reflect the kind of compromise between competing interests which collective bargaining daily requires, but would serve the interests of UTE and the majority of the employees in the unit it sought to represent with hostility to those of the minority. I find that in the circumstances of this case and in the absence of any demonstrated reasonable basis for the discrimination UTE proposed to practice against the Abbey Street employees, it promised to take action following certification which would have been unlawful under Miranda Fuel Company, Inc., *supra*, and therefore, violated Section 8(b)(1)(A). See Cox, The Duty of Fair Representation, 2 Villanova Law Review 151, at 159--164, and 172-175. Wellington, Union Democracy and Fair Representation, 67 Yale Law Review 1327, at 1339--1343. Kahn, Seniority Problems in Business Mergers, 8 Industrial and Labor Relations Review 361. See also Trailmobile Co. v. Whirls, 331 U.S. 40, at 62, 68--69 (Dissenting opinion of Justice Jackson); 65 Harvard Law Review 490. Compare The Wheland Company, 120 NLRB 814, at 818-819, *enf. den.* 271 F. 2d 122 (C.A. 6); Britt v. Trailmobile Co., 179 F. 2d 564 (C.A. 6), *cert. den.* 340 U.S. 820 (1950).

F. Case No. 16-CA-2226

1. The facts

Following the consolidation of the terminals and pending the outcome of the representation case, Red Ball maintained the classifications

and assignments of employees from both terminals to the extent possible.

The first 2 weeks following the merger were characterized by Red Ball as a training period, during which the Teamster employees worked side by side with the UTE employees. Both groups worked approximately the same number of hours. As a result, for the first 2 weeks most of the Teamster employees worked in excess of 8 hours each day. As Respondent determined not to change the working conditions of any of the employees pending resolution of the representation case, the Teamster employees received premium pay for their daily overtime. However, most of the UTE employees worked 10 hours or less a day and received no premium pay.

On Friday, October 2, the last day of the second week following the merger, Red Ball held two employee meetings on the dock in order to discuss problems encountered in the merger. The employees were told by Manager Bailey and Red Ball's Attorney Smith that overtime costs were too high and Red Ball was going to eliminate all premium pay work unless absolutely necessary. To dispel confusion among the employees over the status of the collective-bargaining agreements Attorney Smith told the employees that until the question concerning representation was settled, no changes would be made in their wages and conditions of employment from those which they enjoyed prior to the consolidation, and that the Company would try to be as fair as possible with the employees.<sup>20/</sup> At these meetings employees asked questions as to when premium pay for overtime would start. They were told that the employees in each group would receive premium pay in accordance with the provision of the contract which had covered them prior to the merger. Some of the UTE employees thereafter complained to Red Ball because under this arrange-

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<sup>20/</sup> Attorney Schoolfield testified that it was Respondent's position that neither contract was in force and effect following the merger but that until the question concerning representation was resolved, Respondent would maintain in effect the terms and conditions of employment as they had existed before the merger without unilateral changes.



ment Teamster employees received time and a half for daily overtime after 8 hours while they did not begin to receive such pay until they had worked 10 hours in a day.

From Monday, October 5 on, there was a sharp decrease in the daily overtime worked by the Teamster employees and a substantial increase in the daily overtime worked by the UTE employees.

On Tuesday, October 6, at the end of his regular 10 hours employee John Salley, a UTE employee, was told by Dock Foreman Baker that it was his quitting time and to go home. As Salley walked away, Baker called him back and told him to continue working, adding "for the next 2 weeks prior to the hearing we are going to let the UTE men get all the overtime they want." On the same day a Teamster employee, Ainsworth, heard Baker make a similar statement.<sup>21/</sup>

A day or two later a grievance was filed by Local 568 on behalf of all its members at Red Ball signed by Bud Giddens, the Teamster job steward, Gus Rachel, Jr., and Curtis Pilcher, and dated October 7, 1964, protesting the change in overtime assignments at the beginning of that week. The grievance stated in part:

[T]his is to request that all employees under the Teamsters Contract be afforded the right to work the overtime in accordance with seniority with those employees under the U.T.E. Agreement and that all employees affected under the Teamsters Contract be paid for all overtime hours worked, in accordance with seniority by those employees under the U.T.E. Agreement, beginning October 5, 1964, to and including the date of settlement of this grievance.<sup>22/</sup>

Red Ball refused to entertain the grievance on the ground that it would

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<sup>21/</sup> A third employee, C. W. Smiley, also testified that he heard Baker make a similar statement. As Smiley was vague about the date of the remark, which in his affidavit given to the General Counsel he placed at a time when he was on vacation, and as his testimony is in any event cumulative, I do not rely upon it. However, the testimony of Salley and Ainsworth, which was not contradicted, is credited.

<sup>22/</sup> Following the filing of a copy of this grievance with (Continued)

not recognize the grievance and arbitration provisions of either contract consistent with its position that neither contract was then in force and effect.

One afternoon during the same week Teamster steward Giddens, a driver, went to the Murphy Warehouse to pick up a shipment. While there his 8 hour regular shift approached its end. Green, a UTE driver whose normal shift ended at the same time as Giddens', was sent to the Murphy Warehouse to relieve Giddens and to instruct Giddens to return to the terminal. Giddens returned to the terminal where he clocked out, while Green remained at the warehouse and finished the job on overtime.<sup>23/</sup>

During the weeks which followed October 5 most of the UTE employees received substantially more premium pay work and therefore more premium pay than most of the Teamster employees, as described below in detail.

As the second election approached, Red Ball expressed its views on the election to the employees. Following the decision of the Regional Director to set aside the first election, Red Ball distributed a letter dated November 13, signed by Manager Bailey and addressed to all its Shreveport employees, informing them that the election had been set aside but not because of any illegal conduct on the part of Red Ball. In the letter Red Ball assured its employees that it would protect their rights in negotiations and warned them not to "fall for any threats regarding this election from anyone." It also contained the following:

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<sup>22/</sup> (Continued) Terminal Manager Bailey, additional signatures were obtained by Local 568 on another copy and an additional matter of complaint was added to it. According to the Teamsters business agent, the addition was orally reported to Red Ball but a copy of the amended grievance with the added signatures was not presented to the company.

<sup>23/</sup> The findings with respect to this incident are based on Giddens' uncontradicted and credited testimony.

The big question is which contract will apply. We think you have all worked side by side long enough to know in your minds that the UTE contract assures all of you of more take home pay. This Company is not able to pay one and one half times the hourly rate to move freight. The Teamster contract restricts you to 8 hours per day, and 40 hours per week by its penalty time provision. Those of you who have worked at the Abbie Street dock know this.

We think you should stick by your own convictions and vote for the UTE contract as you did before so your families can enjoy the extra take home pay.

On November 27, another letter was sent to all the Red Ball employees also over the signature of Bailey. In it average weekly wages at Teamster represented locations in New Orleans, Shreveport, and Memphis were compared to the average weekly wages of the UTE represented employees in Shreveport for the week ending November 19. The letter ended:

We know that you know that the UTE contract is the best labor agreement. Vote your true convictions in the secret ballot election this Wednesday.

On December 1, the day before the election a telegram over the signature of Henry English, president of Red Ball, was posted for employees to read. It stated that Bailey had expressed English's feelings with reference to the union contracts and ended:

I deeply appreciated the vote in the last election and hope this next one will be even more in favor of the UTE contract.

The timecards of the employees which were introduced, provide a record of the amount of daily overtime worked by each employee at

the terminal from September 25 through December 3. From them, another exhibit setting forth employee schedules and assignments, and the testimony of Manager Bailey, the following table has been prepared as a basis for the analysis and evaluation of the overtime worked by the Airport Drive employees from October 5 through December 3. To facilitate comparison the employees are listed in the order of their regular quitting times.

In the first column appears the name of each employee and the designation UTE or IBT to indicate whether he worked at Airport Drive or Abbey Street before the merger. The second column sets forth each employee's straight time pay rate during the material period. The third column shows each employee's regularly scheduled quitting times and work days. The fourth column lists each employee's classification, special assignments, if any, and, if a driver, the type of truck he predominantly drives. The final column sets forth the total number of overtime or premium pay hours worked by each employee during the October 5--December 3 period, excluding any such time worked on Saturdays and Sundays.<sup>24/</sup>

Name		Rate	Quitting Time	Truck Classification	Total O.T. after 10/4
Dewitt Turner	IBT	3.14	10.50 M-F	Driver (Dock wbrk)	1.32
W. H. Litton	UTE	3.14	11.50 M-F	Driver (Hostler)	27.62
W. E. Salley	IBT	3.14	11.50 M-F	Checker	6.34
E. O. Ainsworth	IBT	3.14	11.50 M-F	Checker	1.92
B. W. Brown	IBT	3.14	11.50 M-F	Checker	1.90
Dave Debose	IBT	2.98	11.50 M-F	Dockman	1.50
G. B. Giles	UTE	3.14	11.50 T-S	Checker	22.21

<sup>24/</sup> In conformity with the records, the hours and periods of time are expressed in decimals and are based on a twenty-four timeclock. Thus, a quitting time of 18.50 is 6:30 p.m., and 6.78 hours of premium time worked is equivalent to approximately 6 hours 47 minutes. The reason for the exclusion of Saturday and Sunday premium time is set forth below.

Name		Rate	Quitting Time	Truck Classification	Total O.T. after 10/4
A. D. Wilkins	UTE	3.14	12.50 M-F	Checker/driver (fork lift oper.)	25.56
L. D. Glasgow	UTE	3.00	12.50 M-F	Non-d./helper	31.10
Franklin Millen	UTE	3.00	12.50 M-F	Non-d./helper	26.32
Dean Tuggle	UTE	2.70	12.50 M-S	Non-d./helper (utility)	34.00
John Salley	UTE	3.00	12.50 M-F	Non-d./helper	15.94
B. B. Daniel	IBT	3.14	12.50 M-F	Driver (trailer- local run)	5.69
J. J. Groves	UTE	3.14	12.50 T-S	Checker	28.58
S. H. Stiles	UTE	3.00	12.50 T-S	Non-d./helper	20.40
Ronald McGee	UTE	3.00	12.50 T-S	Non-d./helper	28.55
V. A. Clanton	UTE	3.14	12.50 M-F 16.50 Su	Checker/driver (trailer)	17.76
George Burks	IBT	3.14	13.50 M-F	Checker	5.62
James Shepard	UTE	3.14	13.50 T-S	Driver (Hostler)	23.49
J. T. Plunkett	IBT	3.14	13.50 T-S	Driver (trailer)	7.04
Jearl Rushton	UTE	3.00	14.50 M-S	Non-d./helper	14.97
James Martin	IBT	3.14	14.50 M-F	Checker	4.65
Sam Santone	IBT	3.14	14.50 M-F	Checker	8.80
C. W. Smiley	IBT	3.14	14.50 M-F	Checker	5.29
Jerry Davis	UTE	2.70	14.50 M-S	Non-d./helper	19.40
H. B. Brown	UTE	3.14	15.50 M-F	Checker	28.66
L. F. Raley	UTE	3.00	15.50 M-F	Non-d./helper	27.89
Raymond Iles	UTE	3.00	15.50 M-F	Non-d./helper	19.74
Jimmie Langston	UTE	2.70	15.50 M-S	Non-d./helper	18.87
R. L. Land	IBT	3.14	15.50 M-F	Driver (trailer-- local run)	61.14
E. M. Lofton	UTE	3.14	16.50 M-F	Checker/driver (trailer)	19.31
L. B. Green	UTE	3.14	16.50 M-F	Checker/driver (trailer)	19.94



Name		Rate	Quitting Time	Truck Classification	Total O.T. after 10/4
Bud Giddens	IBT	3.14	16.50 M-F	Driver (trailer)	5.43
Leroy Hicks	IBT	3.14	16.50 M-F	Driver (trailer)	12.42
Curtis Stewart	IBT	3.14	17.00 M-F	Driver (bobtail)	22.86
John Lasyone	IBT	3.14	17.00 M-F	Driver (bobtail)	17.61
Otis Debose	IBT	3.14	17.00 M-F	Driver (trailer)	21.57
Troy Beavers	UTE	3.14	17.50 M-F	Checker/driver (trailer--local run)	20.71
B. M. Cryer	IBT	3.14	17.50 M-F	Driver (trailer)	13.40
W. E. Dean	IBT	3.14	17.50 M-F	Driver (trailer-- local run)	23.14
Marvin Joiner	UTE	3.14	17.50 T-F 15.50 Sa.	Checker	13.17
Henry Simmons	UTE	3.00	17.50 T-F 15.50 Sa.	Non-d./helper	11.42
E. L. Farrell	UTE	3.00	17.50 T-F 15.50 Sa.	Non-d./helper	6.78
A. R. Groves	UTE	3.14	18.50 M-F	Checker/driver (trailer)	37.85
C. B. Harvey	UTE	3.14	18.50 M-F 15.50 Sa.	Checker/driver (trailer)	23.20
Austin Hamilton	UTE	3.14	18.50 M-F	Checker/driver (bobtail)	29.13
R. L. Garrett	UTE	3.14	18.50 M-F	Checker/driver (bobtail)	15.85
B. R. Anderson	UTE	3.14	18.50 M-F	Checker/driver (bobtail)	27.55
Felton O'Daniel	UTE	3.14	18.50 M-F	Checker/driver (bobtail)	20.39
R. G. Guice	UTE	3.14	18.50 M-F 15.50 Sa.	Checker/driver (bobtail)	23.75
Robert May	IBT	3.14	18.50 M-F	Driver (trailer & bobtail)	7.84
Milton Nash	IBT	3.14	18.50 M-F	Driver (bobtail)	4.44
Gus Rachel, Jr.	IBT	3.14	18.50 M-F	Driver (bobtail)	3.53



Name		Rate	Quitting Time	Truck Classification	Total O.T. after 10/4
P. I. Thompson	IBT	3.14	18.50 M-F	Driver (bobtail)	3.04
W. A. Daily	UTE	3.14	18.50 Th-F 11.00 M 20.50 Sa. 15.50 Su.	Driver (hostler)	4.81
W. J. King	UTE	3.14	19.50 M-F	Checker/driver (bobtail)	22.92
Donald Simmons	UTE	3.14	19.50 M-F	Checker/driver (bobtail)	26.87
Jerry Kitchings	UTE	3.14	19.50 M-F	Checker/driver (bobtail)	29.10
Jack Hooper	UTE	3.14	19.50 M-F	Checker/driver (bobtail)	24.71
E. E. Colston	UTE	3.14	19.50 M-F	Checker/driver (bobtail)	33.69
H. P. Bankard	UTE	3.14	19.50 M-F	Checker/driver (bobtail)	29.70
J. T. Bruce	UTE	3.14	19.50 M-F 15.50 Sa.	Checker/driver (bobtail)	27.27
S. O. Davis	UTE	2.84 2.70	19.50 M-F 15.50 Sa.	Checker/driver (bobtail)	32.50
R. J. Gremillion	IBT	3.14	19.50 M-F	Driver (bobtail)	9.64
Raymond Lemoine	IBT	3.14	19.50 M-F	Driver (trailer)	11.09
Joseph Fuller	IBT	2.98	19.50 M-F	Dockman	8.60
Don Creamer	IBT	3.14	19.50 T-F 13.50 Sa.	Driver (trailer)	5.36
Lary Giddens	UTE	3.14	20.50 M-F 15.50 Sa.	Checker/driver (trailer)	19.57
Patrick Quinn	UTE	3.00	20.50 M-F 15.50 Sa.	Checker/driver (bobtail)	18.54
Jimmie Rogers	UTE	2.84	20.50 M-F 15.50 Sa.	Checker/driver (trailer)	27.81
R. R. Brooks	UTE	3.00	20.50 M-F 15.50 Sa.	Non-d./helper	14.28
R. T. Darrett	IBT	3.14	20.50 M-F	Driver (trailer)	3.50

Name		Rate	Quitting Time	Truck Classification	Total O.T. after 10/4
Charles Cowdin	UTE	3.14	20.50 M-F 5.50 Sa-Su. 1.00 M	Driver (hostler)	23.84
Wayne Brunson	UTE	3.14	21.50 M-F	Checker/driver	8.27
Curtis Pilcher	IBT	3.14	21.50 T-F 13.50 Sa.	Driver (trailer)	5.06
James Wells	UTE	3.14	22.50 M-F 15.50 Sa.	Checker/driver	13.31
W. M. Kennedy	IBT	3.14	23.50 M-F	Driver (trailer-- local run)	11.29
W. C. Giles	UTE	3.14	7.00 M-F	Driver (hostler)	3.93
Jack Holoman	UTE	3.14	7.00 M-F	Driver (hostler)	4.65

From this table it appears that during the period it covers the average amount of overtime worked by UTE employees was 21.75 hours, while that worked by the Teamster employees was 10.06 hours. Of the 49 UTE employees only 5 worked less overtime than the average for the Teamster employees. Of the 30 Teamster employees, only 4 worked as much as or more than the average for the UTE employees. As will be discussed below, there are a number of factors which must be considered before valid comparisons can be made and conclusions drawn from the records summarized in the table.<sup>25/</sup>

<sup>25/</sup> Although the information contained in the pay records was not drawn together in any single exhibit in the record from which daily overtime comparisons can be made at a glance, it is a simple, if tedious, matter to extend the above table to make entries for each employee showing the exact number of hours worked each day, absences, vacations, and variations in starting and quitting time. I have made and utilized such a table for my own purposes in setting forth my findings and conclusions herein but deem it unnecessary to burden this decision with its inclusion. For the information and convenience of the parties, however, I have received it in evidence, together with a brief explanatory note, as Trial Examiner's Exhibit 1.

## 2. Concluding findings

### a. The 8(a)(1) and (3) allegations.

There is no doubt on the record that Red Ball preferred UTE as representative of its Shreveport employees and so informed its employees. Moreover, in 1962, as the Board has previously found, Respondent similarly favored UTE in a representation contest between UTE and several Teamster locals, including Local 568, and thereafter Red Ball violated the Act by discharging several Teamster adherents to discourage Teamster membership and activities. Red Ball Motor Freight, Inc., 143 NLRB 125. That case concerned the Dallas, Shreveport and Houston Red Ball terminals. 143 NLRB, at 126.

The question is whether Red Ball here went beyond preference for UTE and discriminated against Teamster employees in the assignment of overtime to aid in bringing about the result it desired.<sup>26/</sup> It is clear that the overtime assignments as a whole were disparate and that UTE employees as a group were assigned more overtime than Teamster employees. The General Counsel contends that the surrounding circumstances establish that Respondent discriminated in making overtime assignments in order to induce its employees to support UTE. Red Ball, which denies any unlawful motivation, contends that numerous factors must be considered in comparing overtime assignments and explain the disparity which appears from the records on grounds other than conscious preference of UTE employees over Teamster employees.

The factors to which Red Ball points are (1) the disparity in the size of the two groups which Red Ball contends gave UTE employees greater exposure to overtime than Teamster employees; (2) contract differences which made it more economical to work UTE employees on

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<sup>26/</sup> The General Counsel does not contend, however, that it was an unfair labor practice during the period between the two elections for Red Ball to work UTE employees 10 hours a day at straight time while working Teamster employees only 8 hours a day at straight time. The General Counsel also does not contend that Respondent violated the Act (Continued)

the sixth or seventh work days of any week and thus increased their exposure to overtime; (3) differences in scheduled quitting times which affect exposure to overtime; (4) differences in the desires of individual employees with respect to working overtime; (5) differences in pay rates, classifications and assignments of employees and (6) fluctuations in freight volume both from day to day.

I agree that some of these factors must be taken into account in any analysis of the overtime figures which appear on the timecards.

The difference in premium pay requirements in the UTE and Teamster contracts, which Red Ball continued to apply, for work on the sixth and seventh days in the work week undoubtedly increased exposure of UTE employees to overtime relative to the Teamster employees. For the Teamster employees, all sixth and seventh day work was premium pay work, while for the UTE employees all such work was straight time work for the first 10 hours as on any other day. In the case of practically all the Teamster employees, the sixth and seventh days during this period were Saturday and Sunday.<sup>27/</sup> As result, Red Ball for economy reasons assigned UTE employees to Saturday and Sunday work where required.<sup>28/</sup> Thus to the extent that any premium pay work became available on these days, only UTE employees were present to receive it, and necessarily had greater exposure to overtime on those days purely for economy, and not for discriminatory reasons. For this reason I have excluded all Saturday and Sunday overtime from the table set forth above and from consideration in comparing the overtime worked by the two groups of employees.

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<sup>26/</sup> (Continued) by continuing in effect without change, pending a determination of the representative of the merged group, the different terms and conditions which had governed both groups of employees before the merger.

<sup>27/</sup> Three Teamster employees worked Saturday as a regularly scheduled fifth day. For them the sixth day was Sunday and the seventh day was Monday.

<sup>28/</sup> Approximately 10 UTE employees also worked regular schedules calling for Saturday work as either a fifth or sixth day. A few had regularly scheduled Sunday work.

I am also inclined to agree that in the light of the nature of Respondent's operations, no valid comparison can be made between overtime worked by two employees with different scheduled quitting times. <sup>29/</sup> Insofar as the record shows, Red Ball may send an employee home at his regular quitting time when it appears that the workload can be handled adequately without overtime only to discover unusual incoming loads during the next hour necessitate holding over employees scheduled to leave an hour later. <sup>30/</sup> It is undisputed that Red Ball's workload fluctuates at times unpredictably, and also that it tends to be heavier toward the end of the day than at the start. For this reason, I have arranged the listing of the employees in the table above by quitting times and exclude from further consideration comparisons between employees with different scheduled quitting times.

Differences in pay, classification, assignment, and employee desires are material and I have considered them where they exist in evaluating the overtime worked by employees with common quitting times. However, I do not agree that disparity in the overall size of the groups of employees resulted in greater exposure of individual UTE employees to overtime than of individual Teamster employees. <sup>31/</sup> Finally the factor of day to day fluctuations in workload may result in fluctuations in general overtime

<sup>29/</sup> By scheduled quitting time I refer to the time an employee's straight time hours ended. While UTE employees were guaranteed only 42 hours a week and sometimes worked less than 10 hours a day, the records show that as a practical matter they worked approximately 10 hours or more every day.

<sup>30/</sup> The reverse of the situation posed may not always be true. If an employee is still working more than an hour after his regular quitting time, but employees scheduled to quit an hour later are sent home without overtime, there may be a basis of comparison. However there are few instances of such overlap, and I have concluded that they add nothing of significance to what more limited comparisons of employees with similar quitting times reveal.

<sup>31/</sup> To be sure, as in the case of the drivers who normally quit at 20.50 the fact that five UTE drivers shared a common quitting time with a single Teamster driver would be expected to result in greater total UTE exposure to overtime, but should not have resulted over an 8 week period of time in greater overtime exposure for each individual UTE driver than for the single Teamster driver.



requirements from day to day, but cannot explain disparate distribution of overtime to employees who can otherwise be validly compared. 32/

Evaluating the time records in the light of the above, I have concluded that there are three groups of employees, which include more than a third of Red Ball's employees, in which there is clear basis for overtime comparisons. In each case, the comparisons disclose unmistakable discrimination in the assignments of overtime.

There are four trailer drivers who were scheduled to end their straight time hours at 4:30 p.m. (16.50). Two, Lofton and Green, are UTE employees, and two, Bud Giddens and Hicks are Teamster employees. During the period in question, Lofton and Green worked 19.31 and 19.94 hours of overtime work respectively. Hicks worked 12.42, hours and Giddens, the Teamster steward, worked only 5.43 hours of overtime. According to Giddens, after the first 2 weeks, when Giddens clocked out, Green and Lofton were usually still at work, mostly on the dock, but sometimes on their trucks. Analysis of the daily overtime worked by Green and Lofton supports Giddens' testimony. Thus, on days when Green and Lofton worked overtime, both worked almost identical amounts of overtime, varying on most days by only several hundredths of a minute or less. If their overtime were predominantly worked away from the terminal on their trucks, it would not be likely that each would have returned from separate trips at almost the same time each day. I credit Giddens' testimony that Lofton and Green were retained on many days to perform dock work on overtime when he was instructed to clock out and leave. 33/

32/ The timecards show that the disparities in overtime assignments cannot be attributed to absence of Teamsters employees from work on days when overtime was heavy.

33/ It will be recalled also that on one occasion when Giddens was away from the dock as 4:30 p.m. approached, Green was sent out to relieve him, and Giddens was sent back to the terminal to clock out while Green continued to work overtime.



In the case of these four drivers there are no disparities of classification, pay rate, assignment, schedule, or predilection which can serve to explain the consistent failure of Red Ball to assign overtime to Giddens in amounts even roughly equivalent to that assigned to the UTE employees. To the contrary, the explanations offered by dock foreman Brandon in his testimony, make it even more difficult to explain the assignments as other than discriminatory. Thus, Brandon testified without contradiction that Lofton and Green, the two UTE drivers, lived outside of Shreveport and car pooled together. According to Brandon they did not want to work overtime.<sup>34/</sup> As for Hicks, Brandon testified that he did not want to work overtime and usually clocked out as soon as he returned to the terminal so that Brandon never got a chance to ask him to work overtime.<sup>35</sup> On the other hand, there was no evidence offered to explain why Giddens was not assigned overtime to the same extent as Green and Lofton. One would therefore expect on the facts that to the extent that overtime work on the dock was available, Giddens, if anything, would have been preferred in the assignments. In these circumstances, I conclude that there is a basis for comparing the overtime worked by Giddens to that worked by Green and Lofton and that the disparity in the overtime assignments is not explained by any of the factors advanced by Respondent.

<sup>34/</sup> Brandon actually testified that Green did not want to work more than his guarantee, which was not 10 hours but 8.4 hours assuming a 5-day week. If this was Green's desire, there were no days when he fulfilled it. I was not impressed with Brandon's testimony in general. He impressed me as voluble but inaccurate. From his testimony as to the desires of Lofton, Green, and others in the light of their overtime histories, I have concluded that it does not follow that employees who impressed him as disliking overtime refused to work overtime as a regular matter, in the absence of independent evidence to that effect, for reasons set forth in more detail below.

<sup>35/</sup> Brandon testified that whatever overtime Hicks worked was on the trucks away from the terminal. Hicks denied that he ever said he did not want to work overtime. However he testified that after October 2, he was told to punch out at the end of his 8 hours, and that most of the time he did so without talking to a foreman or being told to when his 8 hours were up because he knew when his time was up. Hicks also testified that he often came back to the terminal from his last run after his scheduled quitting time.

As for Hicks, Brandon's explanation was at least partially corroborated by Hicks, <sup>36/</sup> and I conclude that Hicks' practice with respect to clocking out precludes a conclusion that he was denied overtime for which he was available.

A number of drivers worked on schedules which called for a normal quitting time of 6:30 p.m. (18.50) a time which Bailey and Brandon described as during the busiest part of the day. Two of the UTE drivers were trailer drivers, and one of the Teamster drivers alternated between the two types of trucks, driving mostly trailers. The remaining five UTE and three Teamster drivers all drove bobtails. <sup>37/</sup>

The timecards show substantial overtime disparities within this group. As between the trailer drivers and bobtail drivers, there is testimony that overtime of the trailer drivers is harder to control than that of the bobtails drivers because of the larger size shipments carried by the trailers and the absence of two-way radios in them. <sup>38/</sup> However, it is not disputed that bobtail drivers generally return to the terminal before 6:30 and work on the dock unloading and loading trucks until they leave. It is also undisputed that this is the time of the day when overtime needs on the dock are likely to be the heaviest. Accordingly, absent further explanation, one would expect the amounts of overtime worked

<sup>36/</sup> See note 35, supra.

<sup>37/</sup> One UTE driver, Daily, worked until 18.50 only on Thursday and Friday, and worked different hours over weekends. He worked as a hostler. No valid comparison can be made between his overtime and that of the others on this group both because of his different duties and the fact that he did not work on three of the five days which the Teamster driver's worked.

<sup>38/</sup> May, a Teamster employee, who was principally a trailer driver, however, worked very little overtime during this period. Red Ball explained this by pointing to May's admitted dislike of overtime. Although I find as a consequence that General Counsel has failed to establish that May was denied overtime for which he was available, the fact that May's distaste for overtime is apparently reflected in the overtime worked by him, and the low overtime worked by Giddens and other Teamster trailer drivers persuades me that the asserted difficulty in controlling the overtime of trailer drivers does not explain away the disparities in favor of the UTE drivers. However, as the following discussion shows, even if the comparison in this group of drivers is limited to the bobtail drivers, there are substantial disparities which cannot be explained.

by bobtail drivers who normally quit at this time to be approximately the same, without regard to whether they are UTE or Teamster employees, as their classifications, duties, rates of pay, and quitting times are the same. Yet the records show that of the five UTE bobtail drivers, four worked more than 20 hours overtime during the 8 weeks starting October 5, and one Garrett worked slightly under 16 hours. During the same period the three Teamster bobtail drivers, Nash, Thompson, and Rachel, worked from 3 to 4 1/2 hours of overtime, or practically none.

No evidence was offered to explain why Nash failed to receive any overtime. As for Thompson and Rachel, Brandon testified that neither wanted to work overtime because at one time they car pooled together and always wanted to leave at the same time. <sup>39/</sup> In the case of Rachel, Brandon testified that especially right after the merger of the terminals, he could not get Rachel to work overtime. Rachel did not testify, but the timecards show that from September 25 to October 2, <sup>40/</sup> Rachel worked 1 to 2 hours a day of overtime as did other Teamster employees. Thompson denied that he had indicated that he did not want to work overtime prior to December 2, except on a few occasions when he had specific reasons.

Brandon also testified that two of the UTE drivers in this group did not want to work overtime. According to him, Garrett did not want to work more than his guaranteed time because he lived some distance from Shreveport, and O'Daniel liked to leave at the end of his regularly scheduled time every day. Brandon also claimed that there were no drivers whose overtime desires varied from one day to the next.

<sup>39/</sup> Terminal Manager Bailey's testimony that Thompson has been reported to him as having refused to work overtime is hardly corroborative of Brandon in view of its hearsay nature. The selection of employees to work overtime at this time of the day is made by Brandon, after Bailey decides whether any overtime is to be worked.

<sup>40/</sup> The timecards for September 21-24 were not introduced.

I find Brandon's testimony both unconvincing and inadequate to explain the disparities in overtime worked by bobtail drivers in this group. Even if Rachel and Thompson disliked overtime, one would expect Garrett and O'Daniel to have worked amounts of overtime similar to theirs. However, although Garrett and O'Daniel worked less overtime than other UTE drivers in this group, both worked four to five times as much overtime as Rachel and Thompson. <sup>41/</sup> In general, the UTE employees whom Brandon identified as disliking overtime worked substantial amounts of overtime compared to other UTE drivers and substantially more overtime than Teamster employees in similar circumstances. On the other hand, the Teamster employees whom Brandon identified as disliking overtime worked approximately the same amounts of overtime as those not so identified. In view of the fact that UTE employees worked 10 hours each day before receiving premium pay overtime and many of them also worked 6-day weeks, one would expect greater rejection of overtime among the UTE employees than among the Teamster employees. Under these circumstances and in the light of my general impressions of Brandon as a witness, I do not credit his testimony as to Thompson or Rachel, or indeed as to the impact on overtime worked of employee preferences generally, except where corroborated by independent evidence clearly attributable to a source other than Brandon. <sup>42/</sup>

<sup>41/</sup> The lower total number of overtime hours worked by Garrett during the period is partially explained by the fact that he was on vacation for the last 2 weeks in November. Both Garrett and O'Daniel also were absent from work on other days when substantial overtime was worked by other UTE drivers in this group. O'Daniel twice worked half days on days when other drivers worked overtime. When Garrett or O'Daniel were present and working, they worked substantially the same overtime as other UTE bobtail drivers.

<sup>42/</sup> The fact that Thompson and Rachel car pooled, to which Brandon attributed their alleged dislike of overtime, would hardly seem to have presented a major obstacle to working overtime, for on most days from October 5 on, the UTE drivers worked substantially the same amounts of overtime on any single day. It would appear that Thompson and Rachel could have worked with the group and still conveniently have ridden together to and from work.



Under these circumstances, I conclude that Nash, Thompson, and Rachel were available for overtime assignments from October 5 until the second election, with at most a few exceptional occasions, that there is a basis for comparing their overtime with that worked by the UTE bobtail drivers with a common quitting time, and that the disparity in their overtime assignments is not explained by any of the factors advanced by Red Ball.

Much of what has been said with respect to the drivers with a 6:30 quitting time applies also to the employees whose scheduled quitting time was 7:30 p.m. (19.50). In this group there were eight UTE bobtail drivers, two Teamster trailer drivers, one Teamster bobtail driver, and one Teamster dockman. In this group, the differences in classification and driving assignments if anything, should have operated to increase overtime assignments to the Teamster employees. <sup>43/</sup>

Nonetheless, reference to the timecards again shows that each of the Teamsters worked appreciably less overtime than each of the UTE employees, and the disparities occurred almost daily and, with isolated exceptions, in favor of the UTE employees. Respondent offered no individual explanation for the disparities in the case of Gremillion and Lemoine, two of the Teamster drivers. In the case of Fuller, the dockman, Brandon testified that Fuller has difficulty reading, works mostly on the schedules to the places formerly covered by the Abbey Street terminal, and for this reason needs watching and assistance. Brandon also testified that Fuller did not want to work overtime, had refused to do so when asked, and left when his 8 hours were up. Fuller denied that he had ever refused overtime or indicated that he did not want to work it. He was not questioned

<sup>43/</sup> As indicated above, overtime worked by bobtail drivers at this time of day is generally on the dock. If, as claimed, overtime is harder to control among trailer drivers, it is because they cannot always get back to the terminal by quitting time. This fact should have increased, not decreased, overtime worked by trailer drivers. Similarly, the dockman's lower rate of pay should result in his working more overtime than drivers, and not less. Accordingly, I have not ruled out the trailer drivers and dockmen in drawing comparisons in this group.

as to his reading ability. For reasons already stated in substantial part, I credit Fuller and discredit Brandon as to Fuller's overtime desires. <sup>44/</sup> Moreover, while Fuller's reading ability may be subpar, I am not persuaded that Fuller, otherwise described by Brandon as a good employee, was denied overtime for this reason. If anything, the regular assignment of outgoing trailers to specific locations at the loading platform should have made the work at Airport Drive more simple than at Abbey Street where trailers had no fixed dock locations. Even if it took Fuller a while to learn, the coding system used on the buggies should have reduced and not increased the amount of reading and understanding required of a dockman. Moreover, the nature of the duties performed by Fuller during his straight time hours did not differ from those performed on overtime, and I find it difficult to conclude that Fuller was a competent useful employee who could be regularly employed on straight time, but was unqualified to perform the same duties on overtime. <sup>45/</sup> In the light of the above, I do not accept Brandon's explanation for his failure to assign Fuller overtime in amounts comparable to that assigned UTE employees.

<sup>44/</sup> In addition, Brandon's testimony that he had trouble with Fuller when he first came over to Airport Drive because he went home when his 8 hours were up is not supported by the records which show that Fuller worked the same overtime as other Teamster employees immediately after the merger. Brandon's identification of J. T. Bruce, one of the drivers in this group, as one of the UTE employees who disliked overtime, does not square with the records which indicate that Bruce worked substantially the same amount of overtime as other UTE drivers in this group, despite an absence from work for 7 working days at the end of November during a period of heavy overtime.

<sup>45/</sup> The records also show that when the Teamster employees in this group received overtime work, although consistently less than that given the UTE employees, Fuller on each day was assigned overtime in amounts comparable to the overtime assigned other Teamster employees, indicating that he was not differentiated for overtime purposes from other Teamster employees in the group who were not alleged to have a similar handicap.



As for the remaining Teamster employee in this group, Don Creamer, Manager Bailey testified that he did not want to work overtime because of an interest in a furniture store, which he had explained to Bailey, corroborating Brandon's testimony that Creamer had turned down overtime. In the absence of any contrary testimony, I conclude that Creamer, unlike the other Teamster employees who were scheduled to quit at 7:30, was not available for overtime work on an equal footing with other employees. However, as to Lemoine, Gremillion and Fuller, I conclude that they were available for overtime assignments on an equal basis with the UTE employees whose regularly scheduled hours ended at 7:30, and that the disparity in their overtime assignments is not explained by any of the factors advanced by Red Ball.

With respect to Giddens, Nash, Rachel, Thompson, Gremillion, Lemoine, and Fuller, the factors advanced by Respondent fail to account for the disparities between their overtime and that worked by employees to whom they may be validly compared, and the record discloses no other reasonable basis to explain the disparate overtime assignments. Moreover, there is independent evidence to establish that the disparate assignments were based on union considerations and for the purposes of encouraging UTE membership and discouraging Teamster membership. As noted above, in 1962 after the Teamsters Union sought to replace UTE as the representative of Red Ball employees at Shreveport, Dallas, and Houston, Respondent discriminatorily discharged Teamster adherents in violation of the Act.

When the disparate overtime assignments began in this case, it is undenied that Baker told Salley and was also heard by Ainsworth to say that for the next 2 weeks the UTE men would get all the overtime they wanted. The one possible explanation for these remarks which could have given them a nondiscriminatory construction cannot be adopted on this record. Thus, coming after the initial 2 week training period during which the Teamster employees worked substantial overtime and UTE employees did not, Red Ball might well have taken the position that it would give UTE employees a similar period of preferential overtime to equalize the amounts worked by both groups and avoid a charge of discrimination by UTE. Had

it done so, the remark made by Baker might well have been construed as a harmless announcement of its intention to avoid playing favorites rather than an announcement of intent to do the opposite. But Red Ball did not at the time of the events or at any time during this proceeding attempt to justify the disparity or Baker's remark on such grounds. <sup>46/</sup> It has insisted instead that the factors discussed above explain the disparities which appear in the overtime records and denies that there was conscious assignment of overtime to UTE members in preference to Teamsters at any time. Thus, Baker's announcements can only be construed as a promise to prefer UTE employees in the assignment of overtime to their benefit and to the detriment of Teamster employees who would otherwise expect to share in overtime work. <sup>47/</sup>

Furthermore, within a few days after Baker's remarks and the beginning of the preferential assignments of overtime to the UTE employees, the Teamster employees protested the disparity. Although Manager Bailey was probably on sound legal ground in refusing to honor the grievance procedures of either contract, the technical basis of his rejection of the grievance did nothing to reassure the Teamster employees that their protest was groundless, and no measures were taken by Red

<sup>46/</sup> To sustain such a defense, more would be required than its mere assertion by Red Ball. It would be necessary to show that Red Ball adopted a standard of equality, administered the assignments of overtime to achieve equality, and thereafter sought to maintain it. Moreover, in the light of the UTE complaints over premium pay and the Teamster grievance over disparate assignments, one would expect a deliberate policy of equalization to have been announced to the employees to dispel employee discontent and make clear the absence of illegal intent. On the evidence before me, such a defense could not be sustained even if urged.

<sup>47/</sup> While it is unclear why Baker limited his announcement to a 2 week period, that limitation in no way detracts from the impact of his remarks. The issuance of the Report on Objections on the previous day by the Regional Director setting a hearing on the objections 2 weeks later may well have caused both the remark and the reference to the 2 week period. As later communications to employees indicated, in the event of a second election, Red Ball desired that the vote, which had been close, be even more in favor of UTE.

Ball to demonstrate that the disparities, which the record clearly reveals, were justifiable. It was in this setting after 6 weeks of the unexplained preferential assignments that Bailey's November 13 letter pointed out that "the Teamster contract restricts employees to 8 hours per day and 40 hours per week by its penalty time provision," and that "Those of you who have worked at the Abbey Street dock know this." This letter went beyond calling attention to differences in the straight time provisions of the UTE and Teamsters contract. What the Teamster employees (those who had worked at the Abbey Street dock) knew was that the "penalty" time provision of the Teamster contract had kept at least some of them from getting premium pay work on the same basis as UTE employees, and that the provision for premium pay in the UTE contract had not similarly penalized them. On the basis of the above I conclude that the Teamster employees were denied overtime on an equal basis with UTE employees, as found above, to demonstrate to all employees that selection of the Teamsters would result in loss of overtime work while selection of UTE would not impair opportunities for premium pay work for the purpose of encouraging employees to vote for UTE and against Teamsters, in violation of Section 8(a)(1) and (3) of the Act.

In the light of the above and the overall disparities in overtime assignments there is basis for strong suspicion that the discriminatory assignments of overtime affected all Teamster employees except for a few whose more substantial overtime is explained by special circumstances. However, for the employees other than those discussed above comparisons are more difficult, and the General Counsel has not come forward to meet the numerous reasons Red Ball has advanced to show that the remaining Teamster employees were not available to work overtime on an equal footing with the UTE employees who received it.

Because of the staggered working hours and differences in duties, classifications, and pay, based on uncontroverted testimony, despite some doubts, I have concluded the evidence before me is not sufficient to establish that there was overtime work for which there were any other

Teamster employees available on the same basis as UTE employees and which the Teamster employees were denied. <sup>48/</sup>

Only a single employee, Turner, was scheduled to quit at 10:30 a.m. (10.50). There is thus no basis to compare his overtime with that worked by any other employee, and despite the almost complete absence of overtime for Turner from October 5 on, it cannot be concluded that he was denied overtime because of union considerations rather simple absence of need.

Among the employees scheduled to stop work at 11:30 (11.50), Litton and Giles, the only two UTE employees in this group, had special duties insofar as the record shows. Litton worked as a hostler, and Giles, the other UTE employee in the group, although classified as a checker, had additional duties as a bill spotter. He received all incoming bills from line hauls and coded them to indicate where the shipments should go when unloaded. According to Manager Bailey no other employee was used regularly for this purpose and Giles' overtime work is explained by his special duties.

The absence of any appreciable overtime worked by either Litton or Giles from September 25 until October 5 casts considerable doubt on Red Ball's claim that their special duties caused their overtime. However, in the absence of any testimony to contradict Manager Bailey as to difference in the duties of Litton and Giles from those of the Teamster employees whose regular schedules ended at the same time, all of whom were checkers or dockmen, I am reluctant to discredit him on the basis of the timecards alone and I accept his explanations.

Only a single Teamster employee, B. B. Daniel regularly quit at 12:30 (12.50). Daniel is classified as a trailer driver with a regularly assigned run. Of the UTE employees with this quitting time, only one, Clanton has similar pay and duties. However, analysis of his timecards

<sup>48/</sup> Significantly, however, in no case where the overtime of Teamster employees may be validly compared with that of UTE employees, does it appear that any Teamster employee received overtime assignments substantially greater than those of comparable UTE employees. Disparities between comparable employees consistently favor UTE employees.



reveals that his actual starting and quitting times frequently deviated from his scheduled hours and for this reason, apart from any other consideration, no valid comparison can be made between his overtime and Daniel's. As for the other UTE employees who quit at this time lower pay, different classifications, or different duties precludes a valid comparison of their overtime assignments.

Of the three employees who were scheduled to stop work at 1:30 p.m. (13.50), the UTE employee was a hostler, while the Teamster employees were a checker and trailer driver. The two UTE employees whose 10 straight time hours ended at 2:30 p.m. (14.50), were both nondriver-helpers and lower paid than the three Teamster employees scheduled to quit at that time. For the reasons already set forth, no valid comparison can be made of their overtime.

Land, the only Teamster driver scheduled to finish work at 3:30 p.m. (15.50), is a driver assigned to a regular fixed run called the Springhill run. This run was assigned to Abbey Street employees before the merger. The nature of his route is such that he frequently cannot complete the round trip in 8 hours and he consistently works overtime. As a result, his total overtime for the period in question exceeds that worked by any other employee at the terminal. Under the circumstances, there is no need to consider this group of employees further for possible support of the complaint.<sup>49/</sup>

There are no UTE employees scheduled to complete work at 5:00 p.m. (17.00), and there is thus no basis to compare the overtime worked by 3 Teamster drivers scheduled to quit at that time with that worked by UTE employees.

<sup>49/</sup> As Land's case illustrates, the few instances in which Teamster employees worked substantial overtime compared to the average overtime worked by UTE employees are explained by special circumstances and do not tend to refute the charge of discriminatory assignment of overtime work in favor of the UTE employees.

Of the two Teamster drivers with 5:30 p.m. (17.50) quitting times, one, like Land, drives a Springhill run and works more than average overtime for this reason. Beavers, a UTE driver, drives a similar run which may account for the fact that he also works more overtime than the rest of the employees who have the 17.50 quitting time. Of the remaining employees, the Teamster employee is a trailer driver, while the UTE employees include a checker and two nondriver helpers. All worked relatively little overtime, and there is no basis to conclude that among them, the Teamster employee was denied overtime assignments for which he was available.

Of the remaining employees who quit at various times between 8:30 p.m. and 7 a.m., only three are Teamster employees. One of them, Kennedy drives a fixed local run and has different hours from any other employee. Another, Pilcher, shares a quitting time of 9:30 (21.50) with a UTE employee, but neither worked any appreciable overtime, and it would appear that little if any overtime was required at the end of their shift.

The third Teamster employee, Darrett, shares an 8:30 (20.50) quitting time with five UTE employees. Three of them were paid at a lower rate than Darrett, and another is a hostler. The fifth, Lary Giddens however, like Darrett, is a trailer driver with same pay rate, who worked 19.57 hours of overtime compared to 3.50 hours worked by Darrett.

To explain the disparity dock Foreman Brandon, who is responsible for the selection of employees to work overtime during the evening hours, testified that Darrett did not want to work overtime, and also that he was not desirable for overtime assignments on the dock because he makes frequent mistakes in loading. Darrett denied that he had ever refused overtime, but was silent as to the charge that he was not reliable as a dock worker. Although I am not disposed to credit Brandon, as Giddens did not work his regular schedule for the last 4 weeks before the election when approximately one-third of his overtime occurred, and Darrett was on vacation for about 2 1/2 weeks before the election, I conclude that the evidence is insufficient to establish that Darrett was denied overtime for which he was available.



In sum, I have concluded that Red Ball violated Section 8(a)(1) of the Act by Foreman Baker's statements on October 6 that the UTE employees would get all the overtime they wanted for the next 2 weeks and further that Red Ball violated Section 8(a)(1) and (3) of the Act by discriminatorily denying overtime work to its employees Bud Giddens, Milton Nash, Gus Rachel, Jr., Philip Thompson, R. J. Gremillion, Raymond Lemoine and Joseph Fuller.

b. The 8(a)(2) allegation

The General Counsel contends, in addition, that by Foreman Baker's statements and by the discrimination in overtime assignments in the circumstances described above, Red Ball also assisted Union of Transportation Employees in violation of Section 8(a)(2) of the Act. Red Ball contends that the 8(a)(2) allegation of the complaint should be dismissed because it is not supported by the charge against it.

The initial charge filed on January 5, contained allegations of violation of Section 8(a)(1), (3), and (5), including allegations which directly support the 8(a)(1) and (3) allegations of the complaint which have been sustained above. The First Amended Charge dated January 20, 1965, failed to name any subsections of the Act other than 8(a)(1), but added to the basis of the charge allegations of assistance to the Union of Transportation Employees. The Second Amended Charge dated February 19, 1965, alleged violation of Section 8(a)(1) and (3) of the Act and omitted from the statement of the basis of the charge the allegation of assistance to UTE. Counsel for the charging party stated on the record that the omissions in The Second Amended Charge were not inadvertent but were designed to avoid operation of the charge as a bar to further processing of the representation case by the Regional Office under its internal procedures. At the hearing, the charging party tendered to the Trial Examiner a third amended charge reincorporating the allegations with respect to assistance, which the Trial Examiner rejected. Charging Party also moved to amend the second amended charge. The motion was denied.

As the facts out of which the allegation of violation of Section 8(a)(2) arises are the same as the facts on which the allegation of violation of Section 8(a)(1) and (3) are based, which the charge adequately supported, I find that the charge as amended was sufficient to support the allegation of violation of Section 8(a)(2) in the complaint. N.L.R.B. v. Palette Stone Corp., 283 F. 2d 641 (C.A. 2). As the role of the charge is merely to initiate an investigation, and it is the General Counsel who is responsible for the prosecution of unfair labor practices in the public interest after a charge has been filed, I find it immaterial that the omission of the 8(a)(2) allegation from the charge in this case appears to have been deliberate rather than inadvertent. See N.L.R.B. v. Fant Milling Co., 360 U.S. 301, 307-308. Accordingly, I conclude that Red Ball's conduct found above to violate Section 8(a)(1) and (3) also violated Section 8(a)(2). Kiekhaefer Corporation, 127 NLRB 1381, enf'd as mod. 292 F. 2d 130 (C.A. 7); Campco Plastics Company, 142 NLRB 1272.

G. The objections to the election in  
Case No. 16-RM-273

With respect to the objections to the election, as I have found above, Foreman Baker on October 6, 1964, promised preferential overtime assignments to the UTE employees and inferentially threatened loss of overtime work to the Teamster employees.

As I have also found, during the period between October 5 and the second election, seven Teamster employees were denied overtime assignments to encourage support for UTE in the election and discourage adherence to Local 568.

Respondent contends that this conduct should not be considered as a basis for setting aside the election because it occurred before the date of the issuance of the ruling on the objections to the first election, and because the charging party was aware of the conduct on which the objections are based at the time of the hearing on the objections to the first election but failed and refused to bring it forward at that time. To support its

first ground, Red Ball relies on Breman Steel Co., 115 NLRB 1581. Whether or not Breman Steel remains good law, <sup>50/</sup> as the discrimination in overtime assignments continued beyond the date of the direction of the second election up to the date of the election, the discrimination in any event affords sufficient basis to cause the election to be set aside. As for the second ground advanced by Red Ball, the claim of discrimination following the first election was not relevant to the objections to the first election, and the charging party was under no duty to raise that claim at the hearing on the objections to the first election.

On the basis of these findings, it is my decision that objections 4, 5, and 6, as are set forth in footnote 4 above, to the December 2, 1964, election have merit. I recommend that they be sustained and that the December 2 election be set aside. <sup>51/</sup>

<sup>50/</sup> While, as Respondent asserts, there appears to be no reported decision overruling Breman Steel, the continued validity of the Breman Steel is doubtful in view of the Board's decisions in Ideal Electric & Mfg. Co., 134 NLRB 1275, and Goodyear Tire & Rubber Co., 138 NLRB 453, which amend the rules of The Great Atlantic & Pacific Tea Company, 101 NLRB 1118, and F. W. Woolworth Co., 109 NLRB 1446, on which the Breman decision is based.

<sup>51/</sup> At the hearing, the charging party introduced additional evidence to the effect that Foreman Tilleaux individually solicited two employees to vote for UTE telling them that their take home pay would be increased by about \$30 a week under the UTE agreement. One of the employees testified he construed Tilleaux's statement to refer to the difference between the straight time provisions of the two contracts. Evidence was also introduced that about 2 weeks after the merger, employee Fuller was asked at his work station by Foreman Baker how he would like to make more money, to which Fuller replied he would like to make "That overtime." While I credit the undenied testimony as to these conversations, I find no additional basis in them to support the objections. Tilleaux's statements appeared only to stress the differences in take home pay under the straight time provisions of the two agreements as a reason to support UTE. The exchange between Baker and Fuller, I regard as too fragmentary and ambiguous to support any finding.

#### IV. The effect of the unfair labor practices upon commerce

The activities of the Respondents UTE and Red Ball set forth in section III, above, occurring in connection with the operations of Red Ball, described in section I, above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. The remedy

Having found that Respondents have engaged in certain unfair labor practices, as alleged in Cases Nos. 16-CB-249 and 16-CA-2226, I shall recommend that Respondents be ordered to cease and desist therefrom and take certain affirmative action.

As I have found that Red Ball discriminatorily denied overtime assignments to the seven employees whose names are set forth above, I shall recommend that Red Ball be ordered to make them whole for the losses of earnings they suffered by reason of the discrimination against them by payment to them of an amount equivalent to what they would have earned by working overtime between October 5 and December 2, 1964, with interest as provided in Isis Plumbing & Heating Co., 138 NLRB 716.

As I have found that the allegations of discrimination against other employees have not been sustained, I shall recommend that the remaining allegations of violation of Section 8(a)(3) in the complaint in Case No. 16-CA-2226 be dismissed.

Finally, consistent with the terms of the order consolidating Case No. 16-RM-273 with the complaint, I shall order that Case No. 16-RM-273 be severed and remanded to the Regional Director for the Sixteenth Region for further action in accordance with Section 102.62(a) of the Board's Rules and Regulations. The Chardon Telephone Company, 139 NLRB 529.

### Conclusions of Law

1. Respondent Red Ball Motor Freight, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Union of Transportation Employees and the charging party, Truck Drivers & Helpers, Local Union No. 568, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, are labor organizations within the meaning of Section 2(5) of the Act.

3. By restraining and coercing Red Ball's employees in the exercise of rights guaranteed them by Section 7 of the Act, Respondent Union of Transportation Employees has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

4. By interfering with, coercing, and restraining its employees in the exercise of rights guaranteed them by Section 7 of the Act, by discriminating in regard to the terms and conditions of employment of Bud Giddens, Milton Nash, Gus Rachel, Jr., Philip Thompson, R. J. Gremillion, Raymond Lemoine, and Joseph Fuller, thereby discouraging membership in the Teamsters and encouraging membership in the Union of Transportation Employees as found above, Respondent has engaged in and is engaging in unfair practices affecting commerce within the meaning of Section 8(a)(1), (2) and (3) of the Act.

### RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10(c) of the Act, I hereby recommend that:

A. Respondent Union of Transportation Employees, its officers, agents, representatives, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening to withhold fair representation from employees of Red Ball Motor Freight, Inc., Shreveport, Louisiana, so as to deprive them of their seniority rights without any reasonable basis



because of their adherence to or support of Truck Drivers and Helpers, Local Union 568, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization.

(b) Promising to represent unfairly employees of Red Ball Motor Freight, Inc., Shreveport, Louisiana, so as to cause them to receive preferential seniority without any reasonable basis, because of their adherence to or support of Union of Transportation Employees, or any other labor organization.

(c) In any like or related manner restraining or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act.

(a) Post at the offices of Respondent Union of Transportation Employees, copies of the notice attached hereto and marked "Appendix A." <sup>52/</sup> Copies of said notice, to be furnished by the Regional Director for the Sixteenth Region, shall, after being duly signed by a representative of said Respondent, be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its members are customarily posted. Reasonable steps shall be taken by said Respondent to insure that said notices are not altered, defaced or covered by any other material.

(b) Mail to the Regional Director for the Sixteenth Region signed copies of the aforesaid notice, for posting, if it so wishes, by Red Ball Motor Freight, Inc., at its Shreveport, Louisiana, terminal. Copies

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<sup>52/</sup> In the event that this Recommended Order be adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDED ORDER OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."



of said notice, to be furnished by the Regional Director for the Sixteenth Region, shall after being duly signed by a representative of said Respondent, be forthwith returned to said Regional Director for such posting.

(c) Notify said Regional Director in writing within 20 days from the receipt of this Decision what steps said Respondent has taken to comply herewith. 53/

B. Respondent Red Ball Motor Freight, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Promising employees preferential assignments of overtime work because of their adherence to or support for Union of Transportation Employees or any other labor organization.

(b) Threatening employees with loss of overtime work because of their adherence to or support of Truck Drivers and Helpers Local Union 568, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America or any other labor organization.

(c) Assisting Union of Transportation Employees by discriminating in regard to the assignment of overtime to its employees, or by threatening or promising so to discriminate.

(d) Discouraging membership in Truck Drivers and Helpers, Local Union 568, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and encouraging membership in Union of Transportation Employees by discriminating in regard to the assignment of overtime to employees or by other discrimination with respect to the terms and condition of employment of its employees.

53/ In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director in writing within 10 days from the date of this Order what steps said Respondent has taken to comply herewith."

(e) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights to self-organization, to form labor organizations, to join or assist Truck Drivers and Helpers, Local Union 568, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in any other concerted activities for the purpose of collective bargaining or other mutual aid or protection or to refrain from any or all such activities.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Make Bud Giddens, Milton Nash, Gus Rachel, Jr., Philip Thompson, R. J. Gremillion, Raymond Lemoine, and Joseph Fuller whole for any loss of earnings they may have suffered by reason of the discrimination against them in the assignment of overtime in the manner provided in the section of the decision entitled "The remedy."

(b) Preserve and upon request make available to the Board or its agents for examination and copying all payroll records, social security payment records, timecards, personnel records, and reports, and all other records relevant and necessary to a determination of compliance with paragraph (a) above.

(c) Post in conspicuous places at its Shreveport, Louisiana, place of business, including all places where notices to employees are customarily posted, copies of the notice attached hereto and marked "Appendix B." <sup>54/</sup> Copies of said notice to be furnished by the Regional Director for the Sixteenth Region shall, after being duly signed by Respondent Red Ball's representative, be posted by it immediately upon receipt thereof and be maintained by it for at least 60 consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

54/ See footnote 52, supra.

(d) Notify said Regional Director in writing within 20 days from the receipt of this Decision what steps Respondent has taken to comply herewith. <sup>55/</sup>

It is further recommended that the allegations in the complaint in Case No. 16-CA-2226 of discrimination against employees other than those named in paragraph B, 2(a) above be dismissed.

**ORDER SEVERING AND REMANDING  
CASE NO. 16-RM-273**

Pursuant to the terms of the Order Consolidating Cases issued by the Regional Director for the Sixteenth Region in Case No. 16-RM-273, it is ordered that Case No. 16-RM-273 be, and it hereby is, severed and remanded to the Regional Director for the Sixteenth Region for further action in accordance with Section 102.62(a) of the Board's Rules and Regulations.

Dated at Washington, D. C. November 29, 1965.

/s/ David S. Davidson  
David S. Davidson  
Trial Examiner

55/ See footnote 53, supra.

NOTICE  
PURSUANT TO  
THE RECOMMENDATIONS OF A TRIAL EXAMINER OF THE  
NATIONAL LABOR RELATIONS BOARD  
and in order to effectuate the policies of the  
NATIONAL LABOR RELATIONS ACT

We hereby notify our members that:

WE WILL NOT threaten to withhold fair representation from employees of RED BALL MOTOR FREIGHT, INC., so as to deprive them of seniority rights, because of their adherence to or support of TRUCK DRIVERS AND HELPERS, LOCAL UNION 568, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or any other labor organization. WE WILL NOT promise to represent unfairly employees of RED BALL MOTOR FREIGHT, INC., so as to cause them to receive preferential seniority, because of their adherence to or support of UNION OF TRANSPORTATION EMPLOYEES or any other labor organization.

UNION OF TRANSPORTATION EMPLOYEES  
(Labor Organization)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

\_\_\_\_\_ This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Sixth Floor, Meacham Building, 110 West Fifth Street, Fort Worth, Texas 76102 (Tel. No. Edison 5-4211, Ext. 2131).

NOTICE TO ALL EMPLOYEES  
PURSUANT TO  
THE RECOMMENDATIONS OF A TRIAL EXAMINER OF THE  
NATIONAL LABOR RELATIONS BOARD  
and in order to effectuate the policies of the  
NATIONAL LABOR RELATIONS ACT

we hereby notify our employees that:

WE WILL make the following employees whole for any loss they may have suffered by reason of discrimination against them in the assignment of overtime from October 5 until December 2, 1964: Bud Giddens, Milton Nash, Gus Rachel, Jr., Philip Thompson, R. J. Gremillion, Raymond Lemoine and Joseph Fuller.

WE WILL NOT promise employees preferential assignment of overtime work because of their adherence to or support of UNION OF TRANSPORTATION EMPLOYEES or any other labor organization.

WE WILL NOT threaten employees with loss of overtime work because of their adherence to or support of TRUCK DRIVERS AND HELPERS, LOCAL UNION 568, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or any other labor organization.

WE WILL NOT discourage membership in TRUCK DRIVERS AND HELPERS, LOCAL UNION 568, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or encourage membership in UNION OF TRANSPORTATION EMPLOYEES by discriminating in regard to the assignment of overtime to our employees or by other discrimination with respect to the terms or conditions of employment of our employees.



WE WILL NOT assist UNION OF TRANSPORTATION EMPLOYEES by discrimination in regard to the assignment of overtime to our employees or by threats or promises so to discriminate.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights to self-organization, to form labor organizations, to join or assist TRUCK DRIVERS AND HELPERS, LOCAL UNION 568, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in any concerted activities for the purpose of collective bargaining or other mutual aid or protection or to refrain from any or all activities.

RED BALL MOTOR  
FREIGHT, INC.  
\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_

By \_\_\_\_\_  
(Representative) (Title)

\_\_\_\_\_  
This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Sixth Floor, Meacham Building, 110 West Fifth Street, Fort Worth, Texas 76102 (Tel. No. Edison 5-4211, Ext. 2131).



[Released April 3, 1966]

### DECISION AND ORDER

On November 29, 1965, Trial Examiner David S. Davidson issued his Decision in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action. He further recommended that objections to the election held on December 2, 1964, in a related representation proceeding, Case No. 16-RM-273, be sustained and the election set aside, as set forth in the attached Trial Examiner's Decision. He further found that the Respondent Employer had not discriminated against certain other employees as alleged in the complaint and recommended that such allegations be dismissed. Thereafter, Red Ball Motor Freight, Inc., the Union of Transportation Employees (UTE), and Local 568 of the Teamsters filed exceptions to the Trial Examiner's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds no prejudicial error. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions, and the entire record in this case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations. <sup>1/</sup>

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner and orders that the Respondent, Red Ball Motor Freight, Inc., Shreveport, Louisiana, its officers, agents, successors, and assigns, and the Respondent, Union of

<sup>1/</sup> As recommended by the Trial Examiner under the terms of the order consolidating the cases, the representation case is remanded to the Regional Director for appropriate action. Our Decision and Order herein is limited to the two complaint cases. The Chardon Telephone Company 139 NLRB 529.

Transportation Employees, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order.

Dated, Washington, D. C. March 30, 1966

/s/ John H. Fanning, Member

/s/ Gerald A. Brown, Member

/s/ Howard Jenkins, Jr., Member

NATIONAL LABOR  
RELATIONS BOARD

(SEAL)

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